

Claims Legal Ltd  
Oakhill Court  
171 Bury New Road  
Prestwich  
Manchester  
M25 9ND

In association with

<b>Date:</b>	06 September 2017	<b>Sector:</b>	Financial
<b>Media:</b>	Internet (social networking)	<b>Agency:</b>	

**Number of complaints:** 1

### **Background**

Summary of Council decision:

Three issues were investigated, all of which were Upheld.

### **Ad**

A video on the YouTube channel of "TheAccidentGuys", seen in February 2017, promoted the website [holidaysicknessclaims.co.uk](http://holidaysicknessclaims.co.uk). Text underneath the video stated, "BREAKING NEWS - HOLIDAY SICKNESS". Further text stated, "Follow up report on Holiday Sickness joined by correspondent live from Spain".

On-screen text in the video stated, "BREAKING NEWS HOLIDAY SICKNESS INCREASES Holiday makers [sic] can claim compensation with [HolidaySicknessClaims.co.uk](http://HolidaySicknessClaims.co.uk)". A man representing a newsreader said, "Last week we reported on the increase in the number of holidaymakers who come down with some form of general holiday sickness, generally attributed to foodborne illness. This week, we report the Health World Organisation [sic] reveals a staggering 351,000 deaths up to 2010 are related to foodborne illness, with 52,000 deaths caused by bacteria salmonella, and 37,000 deaths caused by the bacteria e-coli ... Symptoms such as stomach ache, vomiting, headaches, dehydration, aches and pains, diarrhoea, can all generally be attributed to foodborne illness; without proper treatment the bug or virus generally passes but sometimes can be extremely severe, and can require urgent medical attention and can be life threatening ..."

An "international correspondent stated, "When cases of food poisoning are reported, it makes the authorities aware of hazards and potential hotspots of foodborne illness, and allows them to track and take action where required. In the fight of the bugs, we need to stay one step ahead of them at all times. Alarmingly, people do die from food poisoning and we need to get the news out there that people need to report these matters. Indeed, in the UK, a doctor has to inform the Health and Safety Executive Agency by law within 72 hours of a suspected food poisoning case, and include food history and any travel history. So, if you're travelling abroad this year read up about foodborne illness and food poisoning, and if you get any small signs of illness, the

first thing you should do is report it to your holiday rep or tour operator, and they will generally know if there are other cases and can assist you in seeking medical attention as soon as possible...”

The newsreader then stated, “Alan Hoey, Director of Holiday Sickness Claims, said that people who have been on an all-inclusive packaged holiday in the last three years, and suffered with sickness – even mild sickness – should speak to our client team and report the sickness. As well as being formally recorded for the purpose of statistical analysis, you may be entitled to claim compensation for your sickness on a ‘no win no fee’ basis. European regulations covering all-inclusive packaged holidays now offer greater protection for holidaymakers, and under European regulations, the burden of proof lies ultimately with the tour operator.”

**BCAP Code:**

**CAP Code:** 3.1, 3.7

### **Issue**

1. ABTA, who understood that the statistics on deaths caused by foodborne illness referred to global figures which did not relate to holiday sickness, challenged whether the claim “the Health World Organisation [sic] reveals a staggering 351,000 deaths up to 2010 are related to foodborne illness, with 52,000 deaths caused by bacteria salmonella, and 37,000 deaths caused by the bacteria e-coli” was misleading and could be substantiated.
2. ABTA also challenged whether the ad misleadingly suggested there was a reason beyond making a claim, related to formal statistical analysis, to contact the advertiser.
3. ABTA further challenged whether the claim “European regulations covering all-inclusive packaged holidays now offer greater protection for holidaymakers, and under European regulations, the burden of proof lies ultimately with the tour operator” was misleading and could be substantiated.

### **Response**

Claims Legal Ltd said they had not received any complaints about the ad, or any of their advertising. They did not agree with the points raised by the complainant, but saw the possibility that the message in the ad might on some occasions have been misconstrued. They said they had removed the ad from their YouTube account and all associated media platforms, and would not use it in future.

1. Claims Legal stated that the figures given in the video were taken from the World Health Organization, which they felt was a credible source. They recognised, having reviewed the ad again, that some people might make an assumption about the statistics that led them to interpret the numbers differently than they had intended. They clarified that their intended point was that foodborne illness was a serious issue. They believed it was an important point to make because many people did not appreciate that it could cause severe sickness, onset or aggravation of conditions such as IBS (irritable bowel syndrome), or, if exposed to certain pathogens, even death.

2. Claims Legal acknowledged that the video stated that reporting sickness would also help with statistical analysis, but they did not believe it suggested that they were responsible for submitting such statistics or that the consumer should contact them for the purpose of statistical analysis alone. They explained that the number of claims they processed had been audited by the industry regulator in March 2017, and that in the UK reports of foodborne illness made to medical professionals were formally reported to government or associated agencies for the purpose of statistical analysis. They therefore considered it was the case that complaint statistics were recorded and managed by many agencies. They did not think that any consumer who saw the ad would believe they would gain any benefit from contacting them other than for the purpose of seeking information in regard to making a claim for compensation in regard to holiday sickness.

Claims Legal said the 1990 EU Package Travel Directive had been extended in 2015 by the new Package Travel Directive. They said some parts that had already been implemented and other parts that were due to come into effect would offer greater protection to consumers for various reasons. They provided links to a European Commission consumer rights fact sheet titled “Stronger EU protection for package holidays”, dated May 2015, a link to an online article on the Money Saving Expert website titled “Package holiday protection to be extended from 2017”, dated 13 November 2015, and an undated blog on the website of a barristers’ chambers, titled “The New Package Travel Directive: An Overview”.

They explained that prior to a large increase in holiday sickness claims throughout 2016 and 2017, tour operators chose to settle many complaints without a court hearing. At the time the ad was produced, they maintained that tour operators settled many holiday sickness complaints without any medical proof being provided by the complainant. They believed that demonstrated that the burden of proof was on the tour operator or their agents. They said that approach to dealing with claims only changed in mid-2017, from which point the travel industry had adopted a largely ‘blanket ban’ approach on settling claims without going through the courts. They believed there had been many court cases where the claimant had won the claim because the relevant regulations created an overriding duty of care on tour operators, who had to prove hygiene at the hotel was equal to or better than standards required in the UK, even if the consumer had not sought any medical attention.

They pointed to the judgment in *Wood and Wood v TUI Travel Plc* [2017] in which they believed the Court of Appeal held that tour operators were strictly liable if guests became ill from consuming contaminated food at their hotel. They also referred to *Lavery and Lavery v TUI UK Ltd* [2017], in which the judge had “absolutely no hesitation in finding for the claimants”, described their evidence as “compelling” and stated “The defendant has not produced a shred of evidence to show that good food hygiene procedures were being followed”. They said the claimants in that case had not been able to provide any formal or medical evidence, but the court found in the consumer's favour because the tour operators were strictly liable and could not produce adequate records to support a valid defence.

They believed those cases had the effect of enhancing the protection offered by the relevant legislation because they acted as guidance for the courts and legal

professionals when applying that legislation.

### **Assessment**

The ASA acknowledged the advertiser's willingness to make changes to their advertising.

#### **1. Upheld**

We noted that the 'newsreader' stated, at the start of the ad, "Last week we reported on the increase in the number of holidaymakers who come down with some form of general holiday sickness, generally attributed to foodborne illness", and that there were other references to holidays throughout, including the on-screen text "HOLIDAY SICKNESS INCREASES". There was also a reference to all-inclusive packaged holidays, and we considered that, in that context, consumers were likely to understand from the claim "351,000 deaths up to 2010 are related to foodborne illness, with 52,000 deaths caused by bacteria salmonella, and 37,000 deaths caused by the bacteria e-coli" that the figures would refer to illnesses related to holidays.

The figures had been taken from a report by the World Health Organization entitled "WHO ESTIMATES OF THE GLOBAL BURDEN OF FOODBORNE DISEASES". In that report, there was a heavy focus on developing countries and the figures did not appear to relate specifically to holiday sickness. We noted that the 52,000 figure, for example, related to the bacterium which caused typhoid fever, whereas we considered the reference in the ad to salmonella was likely to be taken as referring to food poisoning cases.

Because the ad implied that the figures referred to illnesses related to holidays, we concluded that the claim had not been substantiated and was misleading.

On that point, the ad breached CAP Code (Edition 12) rules 3.1 (Misleading advertising) and 3.7 (Substantiation).

#### **2. Upheld**

We considered that consumers would understand from the claim "people who have been on an all-inclusive packaged holiday in the last three years, and suffered with sickness – even mild sickness – should speak to our client team and report the sickness. As well as being formally recorded for the purpose of statistical analysis...", that there would be a benefit to contacting the advertiser beyond attempting to make a claim – namely, for the purposes of "statistical analysis". In the context of claims regarding the scale of the problem of holiday sickness, including claims such as, "alarmingly, people do die from food poisoning and we need to get the news out there that people need to report these matters. Indeed, in the UK a doctor has to inform the Health and Safety Executive Agency [sic], by law, within 72 hours of a suspected food poisoning case", we considered that the reference to the recording of claims for statistical analysis implied that such contact would be recorded for official purposes. We considered consumers might therefore feel an obligation to contact the advertiser, when they might not have done had they assumed the only reason was to make a claim.

While we noted that the industry regulator had audited the sickness claims that Claims Legal had processed, we did not consider that justified a claim that

consumers ought to contact them so that their case could be recorded for some form of official statistical analysis. We therefore concluded that the claim had not been substantiated and was misleading.

On that point, the ad breached CAP Code (Edition 12) rules 3.1 (Misleading advertising) and 3.7 (Substantiation).

### 3. Upheld

We considered consumers would understand from the claim “European regulations covering all-inclusive packaged holidays now offer greater protection for holidaymakers, and under European regulations, the burden of proof lies ultimately with the tour operator” that recent changes to the relevant law meant it would now be more likely that a claim would succeed.

We noted that the European Commission consumer rights fact sheet, online article and blog provided by Claims Legal all explained the terms of the new Package Travel Directive (EU Directive 2015/2302) which was signed in 2015. That Directive appeared to be concerned primarily with the definition and treatment of “package holidays”, thus effectively extending the protections provided for those booking pre-arranged packages to those booking customised combinations of travel arrangements through one provider (i.e. booking both flights and accommodation in a single transaction on an airline’s website). Whilst the fact sheet described this as “Stronger EU protection for package holidays”, the Directive was not due to come into force in the UK until 1 July 2018 and it made no mention of the rights of consumers to make claims against travel companies in relation to holiday sickness. The legislation cited in the two 2017 court cases referred to by Claims Legal were the 1992 Package Travel Regulations and the Supply of Goods and Services Act 1982. We therefore considered that the legislation underpinning the law relating to holiday sickness claims had not changed in the period preceding February 2017, when the ad was seen.

Whilst we accepted that the court cases referred to would inform the interpretation of the law, we noted that in *Wood and Wood v Tui Travel Plc* it was not disputed that the claimants had fallen ill as a result of food provided by the hotel. The case established that strict liability did not apply and that the claimants must prove that the food or drink provided was the cause of their troubles, and was “not satisfactory”. In the subsequent case, *Lavery and Lavery v Tui Travel Pc*, the judge concluded that the matter rested on whether the claimants had proven their illnesses were caused by food from their hotel, which he considered they had. Whilst in both cases the claimant was successful, and it was acknowledged that the defendant must demonstrate good standards of hygiene and monitoring of food, those cases established that claimants must prove contamination to secure damages. We considered that those cases did not support the claim that “the burden of proof lies ultimately with the tour operator” or the implied claim that the law now made it more likely that a claim relating to holiday sickness would be successful.

For those reasons, we concluded that the claim had not been substantiated and was misleading.

On that point, the ad breached CAP Code (Edition 12) rules 3.1 (Misleading advertising) and 3.7 (Substantiation).

**Action**

The ad must not appear again in its current form. We told Claims Legal Ltd to ensure they held adequate evidence to substantiate objective claims in future. We told them not to mislead about: the number of deaths related to holiday sickness; their role in the analysis of statistics in relation to holiday sickness; and about the level of protection afforded to consumers and the likelihood of their claim succeeding.

**Press Notes**

**Advertiser made misleading claims about the number of deaths related to holiday sickness.**