

Compliance Newsletter

November 2019

Compliance News for Customer People

This Month's Headlines

- The 'tracksuit tycoon' [calls foul](#) on Nike & Adidas
- The [ICO](#) looks to seize dodgy marketers' assets
- Two nuisance call directors [banned](#) for 6 years
- The [Fundraising Preference Service](#) isn't preferred by many people, it seems
- Deliveroo can't deliver to space - official
- Is DRTV the retro-marketing salvation for marketers with GDPR-diminished databases?
- Tread carefully when setting up Google Ads warns the [ASA](#)

Daniel Defoe said death and taxes are certain - and so are regulation and compliance. But they're not always clear or obvious. Let's try and help...

If you can't avoid compliance and regulation, then why not get a better understanding of it? Better informed, you can meet the compliance challenges when acquiring, retaining and servicing customers.

Welcome to the sixth edition



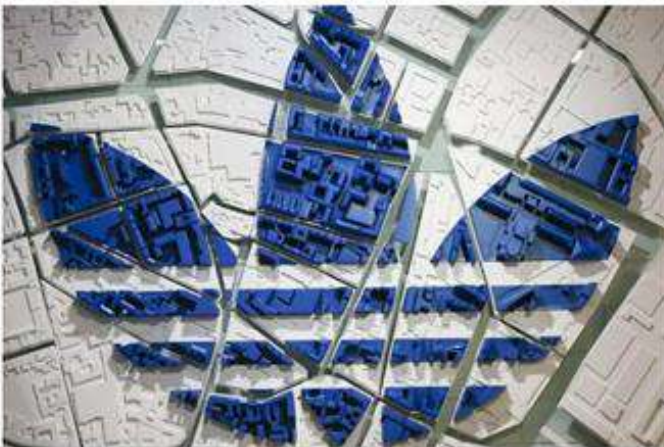
Amongst the CMA's [investigations and announcements](#) over the past month are:

- A shot across the bows for Currys PC World for [still not selling extended warranties correctly](#) after a recent CMA mystery shopping exercise
- An [extended investigation](#) into a raft of commercial radio station acquisitions earlier in the year which increased Bauer Media's market share to 34%

The Telegraph News Politics Sport Business Money

Economy Companies Markets Alex

Sports Direct calls for inquiry into Adidas and Nike dominance



Sports Direct admitted that German giant Adidas withdrew its supply of replica Chelsea football shirts from its stores in 2013.

And Sports Direct's Mike Ashley (the 'Tracksuit Tycoon', as the Telegraph calls him) has [called for a CMA inquiry](#) into Nike & Adidas' alleged abuse of their market positions



ePrivacy Regulation

The latest expectations (c/o a recent [Osborne Clarke](#) seminar) are that a final text of the ePrivacy Regulation will be agreed before the end of the year. This would mean that the UK will need to change the existing PECR rules to reflect it - if we're still in the EU, or a Brexit transition period or maybe even if a Brexit deal requires it. Or maybe not - who knows? We'll come back to this over the next few months.

ICO Enforcement Actions

It's all quiet from Wilmslow on the enforcement front and the ICO hasn't issued any fines since the last newsletter. However, that doesn't mean there aren't lots of investigations going on in the background and the ICO revealed that it had [raided a business in genteel Chichester](#) (of all places!) suspected of cold calling pension customers, which isn't now allowed.

POCA

The ICO wants to be given the power to seize the assets of bad actors - such as those responsible for illegal spamming and nuisance calling - under Proceeds of Crime Act. . If this becomes reality then a seize on assets is likely to be a far bigger deterrent on data criminals than a bar on them acting as company directors (see the Insolvency Service, below).

You can contribute to the ICO's consultation [here](#).

Facebook vs ICO - a score draw?

In other news the ICO and Facebook announced that they [have settled their dispute](#) over Facebook's alleged role in the Cambridge Analytica political data abuse scandal. Facebook paid their £500k fine and dropped its appeal – but accepted no guilt or liability.

Both the ICO and Facebook claim to feel vindicated by this outcome; arguable neither has been.



Good News from Brussels

The European Data Protection Board ([EDPB](#)) - a kind supreme court for all the European data protection regulators, including (for now) the UK Information Commissioner's Office (ICO) – has made a couple of helpful rulings for business recently.

Firstly, it has approved the [Binding Corporate Rules](#) (BCRs) of ExxonMobil and [Equinix Inc.](#) 'Privacy Laws & Business' [explains all](#).

Secondly, the EDPB has ruled that EU data protection representatives for data controllers or processors from outside of the EU will not be liable for any infringements of data protection law. This is especially good news for UK businesses which, in the event of a no-deal Brexit, are likely to need to appoint local representatives in the EU. Without the threat of shouldering their clients' potentially vast fines for data protection failings, then there may be a few more candidates for the role!

The ever-helpful Jon Baines of Mishcon de Reya provides the full details [here](#).



This is especially good news for James Bond fans. In the old days, MI6's stations overseas tended to be in obscure import-export agencies. So in a post-Brexit future setting up a data protection representative function in EU countries shouldn't entail too much work, now involve no risk of having to pay UK clients' fines - and might even get a discreet call from the secret service...



Two directors of failed Middlesbrough-based solar energy firm Solartech (trading as Hometech) have been [banned](#) from acting as company directors for 6 years after the company failed to pay its £90,000 fine for telemarketing to TPS numbers, imposed by the ICO in November 2018.

*This is a surprisingly quick turnaround for the ICO which - along with its desire to start seizing dodgy directors' assets (see above) - shows an increased desire to punish the guilty men**

**this isn't sexism; illegal and/or fraudulent marketing techniques (or at least getting caught using them) seem to be a predominantly male activity*

The Fundraising Regulator's [2018-19 Annual Report](#) has been published. It reveals that

- 5% of in-scope fundraising charities still haven't registered with the Regulator
- Less than 9,00 fundraising opt-out requests for the Fundraising Preference Service (FPS) were received over 12 months
- 757 consumer complaints about charity fundraising were resolved



The RNLI's Perfect Storm

In last month's newsletter we wrote about the RNLI announcing a volte-face by deciding to use Legitimate Interests as a legal basis for fundraising (marketing). As an update, [Decision Marketing's story](#) explained last week that the RNLI is launching a Christmas 'Perfect Storm' appeal – the perfect storm being its falling income and increased demand. To combat the first problem the RNLI is focusing on old-fashioned direct mail and returning to the use of DRTV after a long break.

Suffering from a denuded, post-GDPR supporter / prospect database? Then if you have a strong, mass-market brand and proposition, why not consider following the RNLI's retro example and starting again with DRTV. Do you remember DRTV?



Ofcom has announced a [consultation](#) on a proposed 'technical clarification' of its Caller Line Identification (CLI) guidelines.

If approved, this means that Ofcom will allow organisations to present non-geographic numbers - or geographic numbers not necessarily directly tied to the physical location of the calling contact centre - as long as this is done consistently, not in order to mislead and doesn't involve the presentation of premium rate numbers for consumers to call.

The **ASA** (Advertising Standards Authority)'s recent rulings include some interesting examples of brands' adverts getting banned. Some for good reasons, others less so... (thanks to [Osborne Clarke](#) for the full stories - links below)



In a surprise to no-one, the [ASA has ruled](#) that Deliveroo riders can't actually deliver takeaways to customers in space. Deliveroo's advertisement even included the clarification that "Some restrictions apply, obviously...", but it's been banned from re-using the advert.

McQueen Gin has had an ad [banned](#) for its implied link between drinking alcohol and outdoor and active pursuits – ***a bitter blow to those of us who have never attempted to hurdle street furniture whilst sober.***





The Casumo gambling app was presented as a Google sponsored result when consumers searched “how to unsubscribe from all gambling” Casumo explained that they had not anticipated this sort of term when sponsoring gambling-related searches – and less compellingly said that they thought “unsubscribe” wasn’t really linked to wanting to stop access to gambling.

Casumo's experience is a useful warning of the dangers of not carefully considering and testing the key word criteria used for Google Ads

PSA

Phone-paid Services Authority

The PSA has fined 3 separate firms - IT Zone, Prime Platform Solutions and Webdata - £250,000 each and banned their spam text based services. The services covered astrology, money saving offers and lottery numbers, respectively - a refreshing change from phone-paid world’s usual run of quizzes, competitions, pornography and tarot readings.



Join now for just £4.50 per month and receive lottery results to your phone every week and access to online results

Before you go

Are we getting this right? Who and what else would you like to see covered in future months’ newsletters about the world of regulation and compliance as it affects customer engagement? Let us know at hello@channeldoctors.co.uk

The Small Print

This content is accurate as of 18th November 2019.

Channel Doctors is a trading name of Murphy Sullivan Associates Limited, a company registered in England and Wales with Registration Number 4830889.

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