

MEMORANDUM OF UNDERSTANDING ON MUTUAL ENFORCEMENT
ASSISTANCE IN CONSUMER PROTECTION MATTERS BETWEEN
THE UNITED STATES FEDERAL TRADE COMMISSION AND
IRELAND'S OFFICE OF THE DIRECTOR OF CONSUMER AFFAIRS

The United States Federal Trade Commission ("FTC") and Ireland's Office of the Director of Consumer Affairs ("ODCA"),

RECOGNIZING the challenges posed by cross-border fraud and deception, and desiring to improve the effectiveness of the enforcement of the Consumer Protection Laws of both countries; and

RECOGNIZING that the laws of both countries contain certain restrictions on international law enforcement assistance, including information disclosure, and that nothing in this Memorandum requires the Participants to provide assistance if such assistance is prohibited by their respective national laws, enforcement policies, and other important interests,

HAVE REACHED THE FOLLOWING UNDERSTANDING:

I. Definitions

For the purposes of this Memorandum,

A. "Consumer Protection Laws" refers,

1. in the case of the United States, to "unfair or deceptive acts or practices" contained in laws enforced by the Federal Trade Commission, including section 5 of the Federal Trade Commission Act, but does not refer to competition or antitrust laws and regulations, and
2. in the case of Ireland, to the laws and regulations contained in Annex A attached to this Memorandum,

as well as any amendments thereto, and such other laws or regulations as the Participants may from time to time identify as a "Consumer Protection Law" for purposes of this Memorandum. Each Participant intends to use best efforts to notify the other of any relevant amendments to its Consumer Protection Laws.

B. "Evidence" means information, testimony, statements, documents or copies thereof, or other things, that are obtained in anticipation of or during the course of an investigation or proceeding under the Participants' respective Consumer Protection Laws.

C. "Participants" means

1. in the case of the United States, the FTC; and
2. in the case of Ireland, the ODCA,

acting with respect to their respective enforcement responsibilities under the Consumer Protection Laws as here defined.

- D. "Person" means any natural person or legal entity, including corporations, unincorporated associations, partnerships, or bodies corporate existing under or authorized by the laws of either the United States, its States, or its Territories, the laws of Ireland, or its Territories, or the laws of other sovereign states.
- E. "Request" means a request for assistance under this Memorandum.
- F. "Requested Participant" means the Participant from which assistance is sought under this Memorandum, or which has provided such assistance.
- G. "Requesting Participant" means the Participant seeking or receiving assistance under this Memorandum.

II. Object and Scope of Assistance

- A. The Participants recognize that it is in their common interest to share Evidence that will: facilitate effective enforcement of their respective Consumer Protection Laws; avoid unnecessary duplication; facilitate coordinated investigations, research, and consumer and business education; promote a better understanding by each of economic and legal conditions and theories relevant to enforcement of their respective Consumer Protection Laws and related activities; and keep each other informed about developments in their respective countries that may affect the implementation of the terms of this Memorandum.
- B. In furtherance of this common interest, consistent with Article IV, staff of the Participants intend to use best efforts to exchange and provide appropriate information in relation to: investigations and research; speeches, research papers, and journal articles; compliance education programs; amendments to relevant legislation; and staffing and resource issues.
- C. Consistent with Article IV, the Participants intend to use best efforts to assist one another and to cooperate on a reciprocal basis in providing or obtaining Evidence that could assist in determining whether a Person has violated or is about to violate their respective Consumer Protection Laws, or in facilitating the administration or enforcement of such Consumer Protection Laws.
- D. Consistent with Article IV, staff of the Participants intend to use their best efforts to inform each other as soon as practicable about violations of Consumer Protection Laws occurring or originating in the territory of the other Participant, or that affect consumers or markets in the territory of the other Participant.
- E. Consistent with Article IV, assistance contemplated by this Memorandum includes, but is not limited to:
 - 1. using best efforts to disclose, provide, exchange, or discuss Evidence in the possession of any Participant;

2. using best efforts to cooperate in the detection and investigation of violations of the Participants' Consumer Protection Laws;
 3. using best efforts to obtain, or arrange the obtaining of Evidence at the request of a Participant, including
 - a. taking the testimony or statements of Persons or otherwise obtaining information from Persons;
 - b. obtaining documents, records or other forms of documentary Evidence; or
 - c. locating or identifying Persons or things;
 4. using best efforts to assist in service of process;
 5. using best efforts to share appropriate consumer complaint information; and
 6. in appropriate cases, coordinating enforcement against cross-order violations of the Participants' respective Consumer Protection Laws.
- F. Nothing in this Memorandum is intended to prevent a Participant from seeking assistance from or providing assistance to another Participant pursuant to other practices.
- G. This Memorandum is intended to be used solely for the purpose of law enforcement assistance between the Participants. The provisions of this Memorandum are not intended to give rise to a right on the part of any private person to obtain, suppress, or exclude any Evidence.
- H. Nothing in this Memorandum is intended to compel a Person to provide Evidence in violation of any legally applicable right, privilege, or restriction.
- I. Nothing in this Memorandum is intended to affect the right of a Participant to seek Evidence on a voluntary basis or otherwise lawful basis from a Person located in the territory of the other Participant, nor is it intended to preclude any such Person from voluntarily providing Evidence to a Participant.

III. Requests for Assistance

- A. Requests by the ODCA should be addressed to: Associate Director, International Division of Consumer Protection, FTC. Requests by the FTC should be addressed to: Assistant Director, Enforcement 2, ODCA.
- B. Requests should include, if applicable:
 1. identification of the Persons subject to any investigation or proceeding;
 2. a general description of the subject matter and nature of any investigation or

- proceeding to which the Request relates;
3. where applicable, a description of the Evidence sought;
 4. where applicable, the identity and location of any Person who is to be served with process;
 5. where applicable, a description of the action that the Requesting Participant is requesting that the Requested Participant take;
 6. where applicable, a description of procedural or evidentiary requirements bearing on the manner in which the Requesting Participant desires the Request to be executed;
 7. requirements, if any, for confidential treatment of the Request or its contents; and
 8. any other information that the Requesting Participant believes would be helpful in facilitating review or execution of a Request.
- C. Requests may also be submitted by completing the ICPEN Information Request Pro Forma.
- D. Staff of the Participants should consult with each other regarding a Request in order to work out details regarding the manner and timing of executing the Request.

IV. Limitations on Assistance

- A. Consistent with its national laws, international obligations, enforcement policies and other important interests, a Participant should use its best efforts to provide assistance in response to a Request. The Requested Participant may decline to provide assistance.
- B. Notwithstanding any other provision of this Memorandum, a Participant should not communicate information to the other Participant if such communication is prohibited by the laws governing the Participant possessing the information or would be incompatible with that Participant's important interests.
- C. Before denying a Request, the Requested Participant should consult with the Requesting Participant to determine whether assistance may be given in part, subject to specified terms and conditions. If a Request is denied, the Requested Participant should provide the Requesting Participant with a written explanation of the basis for denial.
- D. The determination as to whether to grant a Request in whole or in part is delegated to the Associate Director, International Division of Consumer Protection, in the case of the FTC, and to the Director of Consumer Affairs, or a person acting on his/her behalf, in the case of the ODCA.

V. Confidentiality

- A. Unless otherwise discussed by the Participants, each Participant should, to the fullest extent possible and consistent with its laws, seek to maintain the confidentiality of any information communicated to it in confidence by the other Participant under this Memorandum.
- B. The Requesting Participant may, however, consistent with Article IV, communicate such confidential information to other law enforcement agencies (having first obtained assurances that best efforts will be used to ensure the maintenance of confidentiality) for the purpose of Consumer Protection Law enforcement; any such onward sharing of information with other agencies is subject to the consent of the Requested Participant.
- C. Each Participant should oppose, to the fullest extent possible consistent with its laws, any application by a third party for disclosure of such confidential information.
- D. Unless otherwise discussed by the Participants, notifications and consultations pursuant to Articles II and III of this Memorandum and other communications between the Participants in relation thereto should be deemed to be confidential.
- E. Nothing in this Memorandum prevents disclosure to third parties if such disclosure is required by the law of the Requesting Participant. The Requesting Participant should use its best efforts to notify the Requested Participant at least ten days in advance of any such proposed disclosure, or, if such notice cannot be given, then as promptly as possible.

VI. Changes in Applicable Law

In the event of a significant modification to a Participant's Consumer Protection Laws, the Participants should use their best efforts to consult promptly and, if possible, prior to the entry into force of such enactments, to determine whether this Memorandum should be amended.

VII. Return of Evidence

The Requesting Participant should use its best efforts to keep Evidence shared until the conclusion of the investigation or proceeding specified in the Request and should use its best efforts to return such Evidence at that time if the Requested Participant makes a written request for the retention and return of such Evidence at the time the Evidence is shared.

VIII. Costs

Unless otherwise decided by the Participants, the Requested Participant should pay all costs of executing a Request. Where the costs of providing or obtaining information under this Memorandum are substantial, the Requested Participant may require the Requesting Participant to undertake to pay those costs as a condition of proceeding with the Request. In such an event the relevant Participants intend to consult on the issue at the request of either Participant.

IX. Duration of Cooperation

- A. This Memorandum will come into effect on the date of signature.
- B. Assistance under this Memorandum should be available in investigations or proceedings under the Participants' Consumer Protection Laws concerning conduct or transactions occurring before as well as after this Memorandum takes effect.
- C. A Participant should endeavor to provide the other Participant with 30 days written notice before ending its cooperation under this Memorandum. However, prior to withdrawing from this Memorandum, each Participant should use its best efforts to consult with the other Participant.
- D. On cessation of this Memorandum, the Participants should use their best efforts, in accordance with Article V, to maintain the confidentiality of any Request and Evidence communicated to them in confidence by the other Participants under this Memorandum prior to its cessation, and to return, in accordance with the provisions of Article VII, any Evidence obtained from the other Participant under this Memorandum.

X. Review of Memorandum

The Participants intend to consult and review the Memorandum on an annual basis regarding the cooperation, coordination, and enforcement assistance undertaken between the Participants for the prior 12-month period.

XI. Legal Effect

This Memorandum is not intended to create binding obligations under international law.

Signed on this _____ day of _____ 2003, in duplicate.

 Timothy J. Muris
 Chairman
 Federal Trade Commission

 Carmel Foley
 Director
 Office of the Director of Consumer Affairs

Annex A

Consumer Information Act, 1978

European Communities (Misleading Advertising) Regulations, 1988

Package Holidays and Travel Trade Act, 1995

European Communities (Unfair Terms in Consumer Contracts) Regulations, 1995 as amended by European Communities (Unfair Terms in Consumer Contracts) (Amendment) Regulations, 2000

European Communities (Contracts for Time Sharing of Immovable Property – Protection of Purchasers) Regulations, 1997 as amended by European Communities (Contracts for Time Sharing of Immovable Property – Protection of Purchasers) (Amendment) Regulations, 2000

European Communities (Protection of Consumers in Respect of Contracts Made by Means of Distance Communication) Regulations, 2001

European Communities (Requirements to Indicate Product Prices) Regulations, 2002

European Communities (Directive 2000/31/EC) Regulations, 2003