



Case Report

1	Case Number	0099/17
2	Advertiser	Tabcorp Holdings Limited
3	Product	Gaming
4	Type of Advertisement / media	TV - Free to air
5	Date of Determination	08/03/2017
6	DETERMINATION	Dismissed

ISSUES RAISED

- 2.1 - Discrimination or Vilification Gender
- 2.3 - Violence Cruelty to animals
- 2.4 - Sex/sexuality/nudity S/S/N - general
- 2.6 - Health and Safety Within prevailing Community Standards
- 2.5 - Promise of winning State or imply a promise of winning

DESCRIPTION OF THE ADVERTISEMENT

The Advertisement depicts a man affectionately singing the words of “Always” by Bon Jovi to a horse in a gated paddock. The horse is “Criterion”, which is a highly rated Australian thoroughbred racehorse which famously won the 2015 Group 1 Queen Elizabeth Stakes at Randwick racecourse. This scene is depicted in a light-hearted and slapstick manner.

The Advertisement includes a number of flashbacks depicting the same man attending Randwick racecourse on the day of the 2015 Group 1 Queen Elizabeth Stakes and, alongside other attendees, celebrating a winning bet which he had placed on Criterion. From the Advertisement, it is apparent that the man placed a single bet of \$20 on Criterion to win the 2015 Group 1 Queen Elizabeth Stakes, and that this bet was successful.

THE COMPLAINT

A sample of comments which the complainant/s made regarding this advertisement included the following:

This ad is offensive as it portrays a male behaving in a very unintelligent fashion and glorifies gambling, when facts tell us that the gambling damages lives, relationships and our

society.

It makes it look like gambling is a good thing. A wonderful thing that WILL make you money.

THE ADVERTISER'S RESPONSE

Comments which the advertiser made in response to the complainant/s regarding this advertisement include the following:

We refer to your letters regarding complaints (reference number 0099/17) (Complaints) received by the Advertising Standards Bureau (ASB) in relation to a Tabcorp advertisement.

The complainants describe the relevant advertisements as follows:

'Ad shows a man singing and kissing a horse because he has won at the races.'

and

'A man walks past a horse. Whilst remembering winning a race in which he won a bet he placed on that horse, he is cuddling it and carrying on like it's the best thing. It also keeps going back to the race win.'

We understand that the complainants may be referring to Tabcorp's advertisement named "Autumn Racing Brand TVC 30" with key number 'NEWTAB170012' (the Advertisement), which was broadcast during Prime 7 News at approximately 6.43pm on 15 February 2017.

In the light of the Complaints, we understand that the ASB has identified the following sections of the AANA Code of Ethics (Code of Ethics) and the AANA Wagering Advertising & Marketing Communication Code (Wagering Code) as having potentially been breached by the Advertisement:

Code of Ethics

- Discrimination or Vilification Gender

2.6 – Health and Safety Within prevailing Community Standards

Wagering Code

2.5 – Promise of winning State or imply a promise of winning

(the Identified Provisions).

Tabcorp's position is that the Advertisement does not breach the Code of Ethics or the Wagering Code and that the Complaints should accordingly be dismissed by the ASB. Our detailed responses are set out below.

In the interests of completeness, and as advised in your letter, we have responded to the Complaints by reference to the Identified Provisions as well as each other provision of the Code of Ethics and the Wagering Code which apply in relation to the Advertisement.

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TABCORP’S RESPONSE IN RELATION TO THE IDENTIFIED PROVISIONS

Set out below is Tabcorp’s response in relation to the complainants’ concerns which relate to the Identified Provisions.

Before addressing those Identified Provisions, Tabcorp would point out that the Advertisement first aired on free to air and subscription television on 12 February 2017, and had been aired on at least 863 separate occasions as at 25 February 2017 (and has continued to be aired on free to air and subscription television since then). Despite this, the only complaints which Tabcorp is aware of in relation to the Advertisement are the two complaints received by the ASB. This in itself demonstrates that the Advertising does not contradict Prevailing Community Standards, which is the measure against which each section of the Code of Ethics and the Wagering Code is to be assessed.

Code of Ethics Section 2.1 – Discrimination or Vilification Gender

In relation to the Complaint dated 22 February 2017, section 2.1 of the Code of Ethics has been raised as an Identified Provision. Section 2.1 provides that

Advertising or Marketing Communications shall not portray people or depict material in a way which discriminates against or vilifies a person or section of the community on account of race, ethnicity, nationality, gender, age, sexual preference, religion, disability, mental illness or political belief.

The basis on which the Advertisement may breach this section is not clear from the Complaint received on 22 February 2017, however we presume it is on the basis of the complainant’s assertion that the Advertisement portrays “a male behaving in a very unintelligent fashion”.

Tabcorp disagrees with the proposition that the portrayal of the man showing adoration for a domesticated animal amounts to the portrayal of him acting unintelligently by reference to Prevailing Community Standards.

Even if the proposition that the man is depicted in an unintelligent manner was taken as correct, it is unclear how this constitutes discrimination or vilification against people of a particular race, ethnicity, nationality, gender, age, religion, disability or political belief.

In particular, it is not clear how the portrayal of the man could constitute gender discrimination or vilification given that the Advertisement contains no suggestion that the man's behavior is exclusive to the male gender. In this regard, during the flashback scenes the man is showed celebrating Criterion's win in a similar manner to members of the female gender standing next to him at the race track.

Accordingly, Tabcorp submits that the Complaints should be dismissed insofar as section 2.1 of the Code of Ethics is concerned.

Code of Ethics Section 2.6 – Health and Safety Within prevailing Community Standards

In relation to the Complaint dated 22 February 2017, section 2.6 of the Code of Ethics has been raised as an Identified Provision. Section 2.6 provides that

Advertising or Marketing Communications shall not depict material contrary to Prevailing Community Standards on health and safety.

In this regard, the complainant has contended that the Advertisement portrays gambling which "damages lives, relationships and our society".

For the reasons set out below, Tabcorp does not believe that the Advertisement is in breach of section 2.6 of the Code of Ethics.

The form of gambling portrayed in the Advertisement is legal in all Australian States and Territories, and is a legal, and highly regulated, form of entertainment and leisure in Australia. Attending racecourses to view and bet on horseracing is a popular pastime engaged in by hundreds of thousands, if not millions, of Australians each year.

The Advertisement portrays the man engaging in a single instance of gambling. The amount of the bet placed by the man, as shown by the ticket waved during the flashback, is \$20. The bet has been placed by the man in the context of him enjoying a day out at the races and there is no suggestion that the man gambles frequently, or in a manner which could be considered contrary to Prevailing Community Standards on health and safety.

Gambling advertising in Australia is subject to regulation which requires, amongst other things, the inclusion of responsible gambling messaging to ameliorate the potential for such advertising to result in problem gambling. The Advertisement complies with these requirements, including displaying the prescribed responsible gambling message. Further, the Advertisement complies with Tabcorp's Responsible Gambling Code of Conduct, which has been approved by the Victorian Commission of Gambling Regulation.

In all instances, the Advertisement has been broadcast in a manner which is legal in all Australian States and Territories. The Advertisement is a general brand and product advertisement and does not breach any gambling advertising legislation. Section 2.6 of the Code of Ethics does not ban gambling advertising nor does any other part of the Code of Ethics or Wagering Code.

The ASB should accordingly dismiss the Complaints insofar as section 2.6 of the Code of Ethics is concerned.

Wagering Code Section 2.5 - Promise of winning State or imply a promise of winning

In relation to both Complaints, section 2.5 of the Wagering Code has been raised as an Identified Provision. Section 2.5 provides that

Advertising or Marketing Communication for a Wagering Product or Service must not state or imply a promise of winning.

As pointed out earlier in this letter, the Advertisement portrays a single instance of a man placing a winning bet. It does not include any suggestion that he is a frequent bettor or a frequent winner.

In this regard, AANA's practice note in relation to the Wagering Code states in relation to section 2.5 of the Wagering Code that

Advertising or marketing communication may depict winning on a wager provided there is no direct or implied suggestion that winning will be a definite outcome of participating in wagering activities.

Accordingly, Tabcorp's submission is that the Advertisement has no case to answer insofar as section 2.5 of the Wagering Code is concerned.

TABCORP'S RESPONSE IN RELATION TO OTHER RELEVANT PROVISIONS

Code of Ethics – Section 2.2

Section 2.2 of the Code of Ethics states that

Advertising or marketing communications should not employ sexual appeal in a manner which is exploitative and degrading of any individual or group of people.

Tabcorp does not consider that the Advertisement includes any material which could offend this provision.

Code of Ethics – Section 2.3

Section 2.3 of the Code of Ethics states that

Advertising or Marketing Communications shall not present or portray violence unless it is justifiable in the context of the product or service advertised.

The Advertisement contains no presentation or portrayal of violence.

Code of Ethics – Section 2.4

Section 2.4 of the Code of Ethics states that

Advertising or Marketing Communications shall treat sex, sexuality and nudity with sensitivity to the relevant audience.

*There is no presentation of sex, sexuality or nudity in the Advertisement.
Code of Ethics – Section 2.5*

Section 2.5 of the Code of Ethics states that

Advertising or Marketing Communications shall only use language which is appropriate in the circumstances (including appropriate for the relevant audience and medium). Strong or obscene language should be avoided.

The Advertisement does not use or portray the use of any coarse language or vulgarities.

Wagering Code - Section 2.1

Section 2.1 of the Wagering Code states that

Advertising or Marketing Communication for a Wagering Product or Service must not, having regard to the theme, visuals and language used, be directed primarily to Minors.

In its guidance note in relation to the Wagering Code, the AANA states in relation to section 2.1 that

This provision does not apply to advertising or marketing communication which is directed primarily to adults; nor does it apply to advertising or marketing communication that may be seen by minors, but is not directed primarily to them.

In the light of this guidance, Tabcorp points to the following in support of its contention that the Advertisement does not breach section 2.1 of the Wagering Code:

The advertisement features only adult characters. The central character in the Advertisement is portrayed by a 29 year old actor, and the script describes the character as a man in his late 20s.

The Advertisement has not been placed during any children's television programming.

The soundtrack to the Advertisement is of a song released in 1995, which minors are accordingly unlikely to be familiar with and which is therefore unlikely to hold any particular appeal for minors.

Wagering Code - Section 2.2

Section 2.2 of the Wagering Code states that

Advertising or Marketing Communication for a Wagering Product or Service must not depict a person who is a Minor unless the person is shown in an incidental role in a natural situation and where there is no implication they will engage in wagering activities.

There are no minors depicted in the Advertisement. We reiterate that the central character is referred to in the script as a male in his late 20s, and is played by an actor who is in fact 29 years of age.

Wagering Code - Section 2.3

Section 2.3 of the Wagering Code states that

Advertising or Marketing Communication for a Wagering Product or Service must not depict a person aged 18-24 years old engaged in wagering activities.

Again, we reiterate that the only character portrayed in the Advertisement as engaging in wagering activities is a male in his late twenties, in fact played by an actor aged 29 years of age.

Wagering Code - Section 2.4

Section 2.4 of the Wagering Code states that

Advertising or Marketing Communication for a Wagering Product or Service must not portray, condone or encourage wagering in combination with the consumption of alcohol.

The Advertisement does not depict the consumption of alcohol nor does it feature any alcohol in it.

Wagering Code - Section 2.6

Section 2.6 of the Wagering Code states that

Advertising or Marketing Communication for a Wagering Product or Service must not portray, condone or encourage participation in wagering activities as a means of relieving a person's financial or personal difficulties.

The Advertisement portrays wagering as a form of entertainment, rather than as a solution to financial or personal difficulties. AANA's guidance note in relation to this provision is focused on advertising and marketing communications which "unduly play on consumers' fears of financial pressures or present wagering as a viable alternative to employment".

The Advertisement contains no, let alone undue, focus on the potential for gambling to relieve financial pressures. The mere fact that the Advertisement depicts a man celebrating a winning bet, in the amount of \$100, should not amount to a breach of this provision, as evidenced by the AANA's guidance in relation to section 2.5 which advises that advertising or marketing communications may depict winning.

Wagering Code - Section 2.7

Section 2.7 of the Wagering Code states that

Advertising or Marketing Communication for a Wagering Product or Service must not state or imply a link between wagering and sexual success or enhanced attractiveness.

There is no suggestion or implication in the Advertisement that wagering will lead to sexual success or enhanced attractiveness.

Wagering Code - Section 2.8

Section 2.8 of the Wagering Code states that

Advertising or Marketing Communication for a Wagering Product or Service must not portray, condone or encourage excessive participation in wagering activities.

In this regard, AANA's guidance note states that

Simply depicting regular wagering, for example as a routine weekend pursuit during a sporting season, does not equate to portraying excessive participation.

This is on point with the depiction of wagering included in the Advertisement, and it is therefore difficult to see how the Advertisement could offend this provision of the Wagering Code. In particular, the value of the single bet shown in the Advertisement is \$20, so it could not be said that the Advertisement depicts the man wagering beyond his means.

Wagering Code - Section 2.9

Section 2.9 of the Wagering Code states that

Advertising or Marketing Communication for a Wagering Product or Service must neither portray, condone or encourage peer pressure to wager nor disparage abstention from wagering activities.

AANA's guidance note cites content which mocks non-participants as an example of advertising which would offend this provision.

While the Advertisement promotes wagering (in accordance with Australian laws which permit, and regulate, the manner in which wagering can be advertised), it does not disparage persons who do not participate in wagering.

Of the number of persons shown at the racecourse in the flashback scene, only one is depicted wagering. There is no disparagement of the other people in the crowd, none of whom are shown wagering.

Of particular note in this regard, the Advertisement includes responsible gambling messaging which provides as follows

Think! About your choices. Call Gambler's Help or Gambling Help 1800 858 858 or visit www.gamblinghelp.nsw.gov.au or www.gamblinghelponline.org.au. Know when to stop. Don't go over the top. Gamble responsibly.

We therefore submit that the Advertisement does not give rise to any breach of section 2.9 of the Wagering Code.

In view of the material presented above, Tabcorp submits that the Advertisement does not breach any relevant provision of the Code of Ethics nor the Wagering Code and that the Complaints should accordingly be dismissed by the ASB.

OTHER RELEVANT INFORMATION

In the interests of completeness, Tabcorp notes that:

All Tabcorp advertisements are reviewed by Tabcorp's internal legal department against the requirements of, amongst other instruments, the Code of Ethics and the Wagering Code; and FreeTV Australia's Commercial Advice team approved the Advertisement prior to it being broadcast on free-to-air television.

Tabcorp also wishes to emphasise the seriousness with which it treats its responsible gambling obligations and its commitment, above and beyond its regulatory obligations, to the responsible delivery of gambling products. Responsible gambling is an important part of Tabcorp's operating philosophy and company values.

We thank you for providing us with the opportunity to respond to the Complaints.

THE DETERMINATION

The Advertising Standards Board (the "Board") considered whether this advertisement breaches the AANA Wagering Advertising and Marketing Communication Code (the "Wagering Code").

The Board noted the complainant's concern that the advertisement glorifies gambling and is offensive to men, portraying the man as unintelligent.

The Board reviewed the advertisement and noted the advertiser's response.

The Board noted that the advertiser is a company licensed in a State or Territory of Australia to provide wagering products or services to customers in Australia and that the product advertised is a wagering product or service and therefore the provisions of the Wagering Code apply.

As per the AANA Wagering Advertising and Marketing Communication Code Practice Note:

"The Code applies to advertising and marketing communication for wagering products and services provided by licensed operators in Australia. Wagering Product or Service relates to betting on horse races, harness races, greyhound races, or sporting events including electronic sports (competitive video gaming), as well as betting on a series of races or events. It also includes betting on an event, or a series of events, such as novelty events or other contingencies, for example royal baby names or award winners. In addition it includes betting on fantasy sport teams".

The Board first considered Section 2.5 of the Wagering Code which provides: "Advertising or Marketing Communication for a Wagering Product or Service must not state or imply a promise of winning."

The Board noted the complainant's concern that the advertisement makes gambling look like a good thing that will make you money.

The Board noted that advertisement shows a man in a paddock when he sees the horse

‘Criterion’ and it reminds him of a time at the races when he won after betting on this horse. The man, sings and dances in front of the horse and cuddles him through the fence at the end.

The Board noted that the advertisement is for a wagering product and that these products are legally allowed to be advertised. The Board noted that the man is shown reminiscing about a win that he had had in the past and he holds his ticket up to show that he has placed a single \$20 bet on the race and he had won.

The Board noted that the advertisement does not show the man or any other people placing further bets on any races and there is no indication that further bets will lead to winning.

The Board considered that the advertisement does not imply that you will definitely win if you use their product or service, or make any other claims about winning.

The Board determined that the advertisement did not breach Section 2.5 of the Wagering Code.

The Board then considered whether the advertisement complied with Section 2.1 of the Code which requires that 'advertisements shall not portray or depict material in a way which discriminates against or vilifies a person or section of the community on account of race, ethnicity, nationality, gender, age, sexual preference, religion, disability, mental illness or political belief.'

The Board noted that the advertisement features the man singing the song ‘Always’ by Bon Jovi and as he moves toward the horse behind the fence he is throwing hay over himself and putting a carrot in his mouth.

The Board noted the complainant’s concern that the man is being portrayed as unintelligent and silly by his actions toward the horse.

The Board noted that the advertisement was intended to be a light hearted, humorous depiction of the man as he remembered his win and expressed appreciation of the horse and of the joy the horse brought him on that day.

The Board considered that the man’s actions were ‘over the top’ and entertaining and considered that most members of the community would recognise the humorous tone and laugh along with the man and not at the man.

Overall the Board considered that the advertisement did not portray or depict material in a way which discriminates against or vilifies a person or section of the community gender and did not breach Section 2.1 of the Code.

The Board then considered section 2.6 of the Code which states that “Advertising or Marketing Communications shall not depict material contrary to Prevailing Community Standards on health and safety”.

The Board considered whether the advertisement glorified gambling. The Board determined for the reasons mentioned above the advertisement did not depict material contrary to Prevailing Community Standards on health and safety relating to gambling and did not

breach section 2.6 of the Code.

Finding that the advertisement did not breach the Code on other grounds, the Board dismissed the complaints.