



Case Report

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| 1 | Case Number | 0235/17 |
| 2 | Advertiser | Sportsbet |
| 3 | Product | Gaming |
| 4 | Type of Advertisement / media | TV - Pay |
| 5 | Date of Determination | 24/05/2017 |
| 6 | DETERMINATION | Upheld - Modified or Discontinued |

ISSUES RAISED

- Other Social Values
- 2.6 - Health and Safety Within prevailing Community Standards

DESCRIPTION OF THE ADVERTISEMENT

The advert uses Ben Johnson a known drug cheat to promote the product and uses the tag line putting the roid into android

THE COMPLAINT

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

The ad glorified that Ben Johnson was a cheat (he liked to cut corners) and used performance enhancing drugs, " he put the roid in Android" was a line used in the ad. We were watching a great game of rugby with our 10 year old and this is not the sort of message that should be delivered in sport. Gambling ads in sport that children will be watching are bad enough, but this sort of message is totally offensive and inappropriate.

This advert makes light of the use of performance enhancing drugs in sport and sends the completely wrong message that the use of drugs in sport is normal. This advertising campaign belittles the achievements of clean athletes and denigrates those who work to protect clean sport across the world. Is this really the message we want to be exposing to children? Normalising cheating in sport is surely not the message that the ASB wants to send to the community.

Apart from promoting on line sports betting it being controversial, using the disgraced

athlete Ben Johnson in this campaign is particularly distasteful. To make light of the use of steroids constantly throughout the ad sends the wrong message to young people and I think Sportbet has got it seriously wrong here. I hope public opinion sees this ad removed from our screens, I find it extremely offensive.

Ben Johnson is a proven drug cheat & shouldn't be used to promote any product, especially one that encourages gambling. He shouldn't benefit from his crime & also shouldn't be celebrated in any way.

This ad references drug use and gambling.

I strongly object to an identified and other implied sports personalities who have been identified as using drugs being used to promote a product. It sends the message that it is ok to cheat to obtain an improved / faster / better outcome.

Is there enough room? Ben Johnson was a sports cheat and is known world wide for that fact; he uses language that seems to encourage taking "short cuts" or unfair advantage; he is, I presume, being paid for the fact that he cheated and seems to show no remorse: he appears to think this is fun....he's smiling....all the way to the bank! This add is disgraceful I had put up with the betting ads on TV but this is way out of line and is encouraging me to take an even stronger stand against betting on TV

Making a joke of this athletes cheating and use of banned substances as a very poor simile . In every way wrong and in poor taste. What was the Advertising company thinking of, and likewise Sportsbet for putting this to air!. They should made to apologise to the viewing public.

This ad is using a disgraced drug cheat to advertise a gambling site. I don't have a problem with gambling ads per se, though I do object to their ubiquity, their stupidity, and the fact that they're shown when children are viewing. My objection here is the fact that this discredited athlete is being celebrated for finding 'quicker' ways around a site (just as he did the running track) - that the viewer can get some sort of unfair advantage over others by 'cheating'. As well, the reference to his steroid use is offensive. This man is not a role model - on the contrary. The tone of the ad is conspiratorial and indicates that we're all in on the 'joke'. It's not funny, it's not appropriate, and drug cheats like Ben Johnson should not be held up as people to emulate.

The nature of the advertising suggested following his example to make better use of the company's Android app for mobiles. It was screened during an AFL game, trivialised the serious of his offence and almost encouraged following his lead. I and others were offended at the way the advertising handled drug cheating and more so as it was aired during a competitive sports event.

Slogan is 'puts the roid in android'. Promotes illegal drug use as being acceptable, especially in sport. Setting a poor example. Shown when kiddies are watching.

Wrong message to my kids who watch sport with me.

Ben Johnson is a proven drug cheat: highlighting 1988 Gold Medallist (presumably showing he was stripped of it) then using "droid" and "unfair advantage" in the narration is appalling: as one who was devastated by his proven doping in 1988 it is not cool to have him used in a gambling add: not at all.....*

Ben Johnson, an Olympic drug cheat, telling people to take shortcuts using Sports bet. I have serious concerns about the message this company and this ad are telling people.

The ad alluded to the performance enhancing drug taking of both Ben Johnson & other sports & seemed to try & make a joke out of it & implying that it was fine to break the law in this way! Appalling!

Illegal and/or performance enhancing drugs references should not be used in any ads let alone during hours when minors are watching.

I feel it is inappropriate to imply that drug cheats in any way are acceptable, especially in a gambling situation. There did not seem to be any implication that using performance enhancing drugs is wrong, bad for your health or just a stupid thing to do.

The advertisement is effectively promoting drug cheating in sport, as desirable and gambling.

This is utterly disgusting. Ben Johnson was a cheat and the add revels in him being a cheat. Gambling advertising is bad enough from a public health point of view but this is unethical and promotes everything that is bad about gambling. It suggests that cheating is not only acceptable but even funny. I have never complained about an ad before but this is well beyond the pale. I am a doctor, have an Order of Australia for services to Occupational and Environmental Medicine and I am a fellow of the royal Australasian College of Physicians. This should be removed immediately.

Sportsbet are glorifying and making light of drug cheating comparing their bonus betting offers to taking steroids. Lines in the ad include "Sportsbet-putting the roid in android", Ben Johnson saying "especially if you cut a few corners" and "get on it" correlating the sportsbet offer with steroids. This ad taking place DURING A LIVE FOOTBALL MATCH!!!! Completely inappropriate for a program kids are watching and will probably mimic at school this week. THIS AD NEEDS TO BE PULLED. Thanks for your time

To quote the ad: "Ben's an expert in performance enhancement which is why he's endorsing Sportsbet's juiced up new android app that you can download in a record shattering 10 secs- faster if you cut a few corners- get an unfair advantage..." I find this offensive as it's connected to organised sport & the use of a noted drug cheat contradicts anti-doping rationale- not a good look.

THE ADVERTISER'S RESPONSE

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

The essence of the Complaints assert that:

- *it is not cool to have [Ben Johnson] used in a gambling add: not at all...*
- *Ben Johnson is not a role model*
- *The ad is promoting and glorifying the use of steroids in sport*
- *The ad promotes the use of steroids to enhance your performance, to be a better gambler with the new app for android devices*
- *It promotes to children watching that getting any advantage in betting as a positive and necessary act, like in sports*
- *Promotes banned athletes and puts them in the spotlight*
- *There did not seem to be any implication that using performance enhancing drugs is wrong, bad for your health or just a stupid thing to do*

The ASB has identified section 2.6 of the AANA Code of Ethics (Code) as the section which may have been breached based on the Complaints:

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

Sportsbet's response to the Complaints

Sportsbet has considered the Complaints and strongly considers that the Advertisements do not breach section 2.6, or any other section of the Code for the reasons set out below.

1. First and foremost, the nature of an overwhelming majority of the Complaints is, with respect, irrelevant. The ASB is required to make a determination on whether or not the Advertisements breach the advertising requirements within the Code, particularly section 2.6. However, overwhelmingly, the whole tenure of the Complaints appear to be based on the complainants' own personal preferences, values or tastes and not on whether or not the Advertisements depict material contrary to Prevailing Community Standards on health and safety.

2. A further threshold issue is that the Advertisements are clearly and obviously a spoof and parody. They are in no way intended to be – nor could a viewer reasonably consider them to be – a portrayal of a realistic situation. Viewed in this way, the propensity of the Advertisements to depict material contrary to Prevailing Community Standards is significantly reduced.

3. Further, the Advertisements mock and deride athletes who have taken performance enhancing drugs. In no way, do the Advertisements glorify or promote the use of these substances. Although an attempt has been made to do this in a humorous way, it cannot be properly said that exposing drug cheats and their achievements to such mockery and derision could be said to be contrary to Prevailing Community Standards. On the contrary, ordinarily this sort of ridicule would be considered to have negative connotations and a deterrent effect – something which could reasonably be expected to be in line with Prevailing Community Standards.

4. *The fact that Sportsbet has paid Mr Ben Johnson a sum of money to appear in the Advertisements and promote Sportsbet's Android App and that doesn't 'sit well' with a pocket of the community based on their moral compass or otherwise is plainly irrelevant for the purposes of the determination to be made by the ASB.*
5. *Advertising by its very nature is at times somewhat divisive and not all advertisements are universally warmly welcomed based on people's own unique personalities and dispositions. Regardless – this simply does not elevate apparent concerns of that nature to advertising which is either relevant to, let alone contrary to Prevailing Community Standards on health and safety within the meaning of the Code.*
6. *Sportsbet does not in any way condone or encourage the use of performance enhancing drugs. As a wagering operator, Sportsbet's business is built on the integrity of the underlying sporting and racing events that it offers markets on. Sportsbet works closely with sports controlling bodies, racing bodies and government agencies to eradicate integrity risks. With respect, it is ill-informed to suggest that Sportsbet, or any of the Advertisements, condone or encourage prohibited drugs in sport.*
7. *The Advertisements do not show any drugs, nor do they refer to any drugs or in any way endorse or encourage the use of drugs. Simply showing people who have used, or are suspected to have used, performance enhancing drugs is not 'unhealthy' or 'unsafe', nor in any way in breach of the Code.*
8. *The Advertisements feature Mr Johnson and other 'performance enhancement experts' who are known or suspected to have used steroids to gain an unfair advantage, together with a play on the word 'roid', to promote Sportsbet's new Android App as something that is 'performance enhanced' and something that Sportsbet's Android customers should download.*
9. *Playing on this theme, the Advertisements include humorous steroid-related references such as 'jacked up' and 'juiced up' and 'everyone's on it' to promote the enhanced nature of the Android App. From this, there can be no reasonable deduction that Sportsbet is endorsing the use of illicit drugs.*
10. *The examples of performance enhancement shown in the Advertisements are clearly comical in nature and do not present themselves as real outcomes achievable through taking performance enhancing drugs. This includes showing Mr Johnson at the starting blocks lifting both of his hands off the ground in an unnaturally balanced position, the size of the weight that the Eastern Bloc weightlifter is lifting, and smoke coming from the cyclist's tyres to depict the speed he is generating.*
11. *These performance enhanced outcomes are in no way endorsed by Sportsbet in the Advertisements. If anything, the Advertisements mock the featured athletes by showing muscles in grotesque proportions and showing their performances as overt demonstrations of cheating. This is supported by the references in the Advertisements to an 'unfair' advantage that the Android App provides as an analogy to the unfair effect of taking performance enhancing drugs.*
12. *There is no statement or suggestion in the Advertisements that taking performance enhancing drugs is without consequence. On the contrary, the limited nature of Mr Johnson's limited short-term 'success' as a result of taking performance enhancing drugs is*

belittled by the subtle reference to the fact that he was awarded the 1988 Olympic gold medal for only 48 hours.

13. *There is no suggestion in the Advertisements that performance enhancing drugs should be used by anyone. The reference to ‘get on it’ cannot be reasonably interpreted in the context of any of the Advertisements in totality in conjunction with the product that it is advertising as anything other than to download the Android App.*

14. *Sportsbet rejects that the Advertisements in any way encourage children to use steroids. The Advertisements depicts adults in adult situations and is clearly targeted towards adults who will understand the humorous and exaggerated nature of the Advertisements, as described above.*

15. *The Advertisements are shown in strict compliance with regulatory requirements for when wagering advertisements are able to be shown. The fact that some pockets of the community object to the ability for wagering companies to advertise their product or that the Advertisements have been shown during a particular sporting event and/or co-viewed with a minor is entirely irrelevant in considering whether or not it breaches section 2.6 of the Code.*

16. *While we acknowledge that the Advertisements have attracted a number of complaints from pockets of the community wishing to express their personal preferences, values or tastes, the broader community sentiments are overwhelmingly positive, including a significant amount of support for the Advertisements through social media commentary. Support for the Advertisement has also come from prominent media personalities and social commentators such as 3AW’s Neil Mitchell, who has described complaints about the Advertisements as an ‘overreaction’ and commented further that ‘The only problem I have is that I believe he was paid’. In addition, among the raft of public opinion and commentary that are simply miffed at some of the fuss that has ensued following publication of the Advertisements – we draw your attention to the following:*

- *the opinion article in the Sydney Morning Herald on 20 May 2017 titled ‘Critics of Johnson campaign rush to wrong conclusion’ (enclosed);*
- *the Your Say section of the Herald Sun on 19 May 2017 titled ‘Most HeraldSun.com.au readers don’t think the Ben Johnson betting ad crosses the line (enclosed); and*
- *the Opinion in the Herald Sun by prominent social commentator Susie O’Brien titled ‘Johnson just a sideshow on a dubious circus’ on 16 May 2017 (enclosed).*

Conclusion

With the above in mind, the Advertisements cannot reasonably be interpreted as in any way depicting material contrary to Prevailing Community Standards on health and safety.

In Sportsbet’s submission the Complaints lack foundation and should be dismissed.

THE DETERMINATION

The Advertising Standards Board (the “Board”) considered whether this advertisement breaches Section 2 of the AANA Code of Ethics (the “Code”).

The Board noted the complainants concerns that the advertisement makes reference to, condones or encourages the use of performance enhancing drugs/anabolic steroids/illegal activity and cheating. Complainants also raised concerns that the advertisement suggests use of steroids will provide the consumer with super human advantages and sends a bad message to children about the use of drugs in sport and in associating wagering with drug use.

Complainants also raised concerns that the advertisement uses a known sport drug cheat which glorifies drug cheats and that glamorising performance enhancing drugs is contrary to government messages on this issue, the significant work occurring to remove drugs from sports and makes light of the major health and criminal issues of drugs in the Australian community.

The Board also noted some complainant concerns that the advertisement uses Ben Johnson, and that this is improper as he should not benefit from his notoriety. The Board noted that the employment of a particular person in an advertisement is an issue that is not within the Code of Ethics or Wagering Code and that this was not considered.

The Board also noted that the advertisement has a B classification for Free TV but that the CAD ratings do not apply to Pay TV.

The Board viewed Pay TV versions of the advertisement and noted the advertiser's response. The Board considered Section 2.6 of the Code. Section 2.6 of the Code states: "Advertising or Marketing Communications shall not depict material contrary to Prevailing Community Standards on health and safety".

The Board noted the complainants' concerns that the advertisement makes reference to, condones or encourages the use of performance enhancing drugs/anabolic steroids/illegal activity and cheating.

The Board noted the advertisement features predominantly, Ben Johnson an athlete who represented Canada as an Olympian in the 1980s, promoting the new betting app for Sportsbet. The advertisement includes scenes of actors who are depicted to suggest other athletes known to have used performance enhancing drugs such as a Russian weight lifter, a Chinese swimmer and a cyclist. The Board noted that on pay television there were 2 versions of the advertisement, a 30 second and 60 second version. The Board noted that the shorter version only involves Ben Johnson and not the additional athletes.

The Board noted that the Australian Sports Anti-Doping Authority and its international counterparts identifies substances and methods that athletes cannot take or use. Steroids and their related substances are on the banned substance list <https://www.wada-ama.org/en/resources/science-medicine/prohibited-list-documents>. The Board noted that the ban on the use of these types of drugs in sport is widely accepted as the community standard on the taking of performance enhancing drugs and noted that substances can appear on this list for reasons including 'The substance or method has the potential to risk the athlete's health.'

The Board also noted that the use of performance enhancing drugs is widely seen as being potentially harmful to the health of athletes and there are a number of government strategies in the community to educate athletes
<http://www.health.gov.au/internet/main/publishing.nsf/content/illicit-drugs-in-sport>.

The Board noted that the advertisement states that Ben is “an expert in performance enhancement, which is why he is happy to endorse Sportsbet’s new juiced up android app.” The Board noted the advertisement shows other actors portrayed as athletes endorsing the new App as well. The Board considered that the context of the advertisement is to play on the word ‘Android’ when promoting the android version of its new app, and create references to ‘roids’, a slang term for steroids often associated with performance enhancement in sport and fitness.

The Board considered that there are numerous references and double entendres in the advertisement which are intended to mean steroids even though it would be clear to the consumer that the advertised product is a wagering app.

Specifically the Board noted numerous statements in the advertisement: “when it comes to performance enhancement – Ben really knows his stuff.”; “new juiced up android app.”; “this thing is a hit with performance enhancement experts all over the world.”; “everyone’s on it.”; “scientific stuff injected into its back end.”; “faster if you cut a few corners.”; “its unfair advantage is endorsed by all the experts.”; “new jacked up, pumped up, feature injected android app, puts the roid in android.”

The Board noted the advertisement refers to the App having greater speed meaning that you can use the app even more quickly and get a bet on in “record breaking time” and that this is supported by Ben’s comment that it can be done faster “if you cut a few corners.” The advertisement also refers to “putting the roid in android” was a direct reference to the use of steroids and that this in conjunction with the depiction of Ben Johnson was a clear connection to his steroid use.

The Board considered that, while there is no depiction of drug use in the advertisement, the advertisement makes numerous clear references to drug use and in the Board’s view can clearly be considered to be a reference to drug use and that a strong reference to an activity does amount to ‘depiction’ within the terms of the Code of Ethics. The Board then considered whether the drug use is depicted in a manner that appears positive or in a manner that is contrary to prevailing community standards on health and safety.

The Board considered that the advertisement overall suggests that the ‘roid’ is a positive element to the new App and encourages people to use the new App to bet quickly. The Board considered that the impression of the advertisement makes light of drug use and that the use of drugs will enhance performance..

The Board noted the advertiser’s response that “the advertisements are clearly and obviously a spoof and parody. They are in no way intended to be – nor could a viewer reasonably consider them to be – a portrayal of a realistic situation.” The Board also noted that the advertiser considered that “the advertisement mocks athletes who have used performance enhancing drugs and does not glorify or promote the use of those substances.”

The Board considered that the use of a spoof or parody may be the vehicle to deliver the promotion in a humorous way, but that the use of humour does not necessarily outweigh or justify a message that reasonable people in the community might take from an advertisement. The Board also noted that there will be a range of views in the community about how humour in a particular advertisement affects the message of the advertisement.

The Board noted that the advertisement depicts a known Olympic drug cheat and references other athletes who have been found to use performance enhancing drugs. In the Board’s view this depiction is done in a way that makes light of their use of a substance that is banned for

use in sport.

In the Board's view the use of Ben Johnson in conjunction with a humorous message about drug use conveys a message that there is not a negative side to drug use and cheating and could be seen as a suggestion that there are benefits to gain from cheating or from behaviour that will enhance your performance. The Board also considered that, despite the parody, there is little consequence depicted for these actions as the athletes are portrayed in a positive way, rather than showing a negative side to the choices they made in their sporting careers. The Board considered that the reference to Ben Johnson being stripped of his Olympic medal was minimised as a negative consequence by virtue of his now being depicted in a positive manner in the advertisement.

In the Board's view, the overall tone of the advertisement makes light of the use of performance enhancing drugs and of using performance enhancing drugs to cheat in sport. The Board did not consider that the advertisement condoned or encouraged drug use, but noted that section 2.6 of the Code requires only that there is a depiction of an activity that is contrary to prevailing community standards on health and safety. The Board considered that the prevailing community standard on health and safety is opposed to the use of performance enhancing drugs and to avoid drug use more generally. In the Board's view the advertisement depicts performance enhancing drug use in sport in a manner that is contrary to prevailing community standards on health and safety. The Board therefore determined that the advertisement breached section 2.6 of the Code.

The Board also noted complaints regarding the impact on children with regards to messages about the use of drugs in sport and in associating wagering with drug use. The Board noted the advertisement was broadcast during programming that was attractive to families – such as live sport, news and programmes not directly primarily to children. The Board considered that young children would be unlikely to understand the double entendre references to drug use and that there was not a breach of the Code on this basis.

Finding that the advertisement did breach section 2.6 the Code, the Board upheld the complaints.

THE ADVERTISER'S RESPONSE TO DETERMINATION

Confirming the advertisement from our Android campaign was taken off air from Friday 2nd June onwards and will be modified following the upheld complaints against them.