



Case Report

1	Case Number	0552/16
2	Advertiser	Lottoland
3	Product	Gaming
4	Type of Advertisement / media	TV - Free to air
5	Date of Determination	08/02/2017
6	DETERMINATION	Upheld - Modified or Discontinued

ISSUES RAISED

- 2.6 - Health and Safety Depiction of smoking/drinking/gambling
- 2.6 - Health and Safety Within prevailing Community Standards
- 2.8 - Excess participation Condone or imply excess participation

DESCRIPTION OF THE ADVERTISEMENT

There are three versions of this television advertisement promoting Lottoland:

1. BBQ: A family has gathered for a BBQ and when a young man catches his grandmother looking at her phone he reminds her of the 'no phones rule' and points to a bowl full of mobile phones. The grandmother says she is using her phone to take a family photo and we see her holding her phone in front of her while asking her family to smile like they are winning 'hundreds of millions of dollars playing Lottoland' and we see that she is looking at the Lottoland website on her phone.

2. Cookbook: A family are gathered around a table in a kitchen. The grandmother is telling them about her conversation with the newsagent about Lottoland's large jackpots then she places a bowl on the table and tells the family to place their mobile phones in it. The grandmother then goes back to look at a cookbook on the kitchen bench and we see that she has her mobile phone propped up in front of it where her family can't see.

3. Under the Table: We see a grandmother placing a glass bowl on a table in the kitchen, which is then filled with mobile phones, then noticing that one of the chairs is empty and asks where John is. We see John hiding under the table using his mobile phone.

All three versions of the advertisements feature a female voiceover explaining that this week's US Powerball Jackpot is over \$500 Million.

THE COMPLAINT

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

The legal stuff at the bottom of the ad says the usual 'Gamble responsibly Etc.' The advertisement appears to me to be saying gamble irresponsibly seeing as the whole family are on the app at the dinner table and then the mother hides the fact that she is gambling - being the most irresponsible of all of them. I understand it's a bit of "tongue and cheek" but a young child doesn't necessarily know that and it promotes the normalization of gambling in the family home and the fact that it is so easy to do.

The ads that I have the most issue with are encouraging hiding the fact that the person has a gambling addiction. Hiding the gambling from family and blatantly lying about it.

I think it encourages gamblers to hide their addiction from their family. She hides her phone in a cookbook...she lies about why she has her phone and pretends to take a family photo... there's also one of someone hiding their betting by betting on their phone under the table.

THE ADVERTISER'S RESPONSE

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

Response to complaint: reference number 0552/16

I refer to your letter enclosing a copy of a complaint received by the Advertising Standards Bureau (ASB) about one of our advertisements.

General comments on the process

I note that:

(a) the Case Managers have not seen/heard the advertisements complained about; and

(b) a response deadline of 7 days has been imposed without explanation as to why this short period of time will "...ensure the case is considered in the most optimal timeframe..."

The ASB has accepted a complaint and assessed that it raises issues under the AANA Advertiser Code of Ethics (Ethics Code) without even looking at the advertisement in question. The ASB Case Managers have given us 7 days to provide a comprehensive response off the back of that. I find the process adopted in our case to be both extraordinary and unfair.

However, we provide this response and reserve the right to make further submissions if the ASB does not dismiss the complaint and/or wishes to take it further.

The advertisement(s) in question

From the reasons given by the complainant, it appears to me that the complainant is referring to 3 linked TV advertisements that Lottoland Australia recently broadcast. Copies of the 3 advertisements (or links to them) are provided with this response.

The reason given by the complainant appears to be that one or more of the individuals in the advertisements is "hiding" their "addiction" to gambling/betting.

In our view, this reason is not supportable when the advertisements are properly considered as a whole. The play of the advertisements is on how attached people are to their phones.

Specific responses

I note that the Case Managers have identified that the complaint raises issues under section 2 of the Ethics Code and has asked that we respond on all parts of section 2. On even a cursory look at the advertisements in question, it is obvious that none of sections 2.1, 2.2, 2.3, 2.4 or 2.5 of the Ethics Code have any application whatsoever.

Suffice to say that, if the ASB takes a different view, we request the opportunity to provide detailed reasons for our view.

In relation to section 2.6 of the Ethics Code, I am not aware of any Prevailing Community Standard (as that phrase is defined in the Ethics Code) that might apply to material in the advertisements in question.

I note that the ASB Case Managers have not raised with us any particular Prevailing Community Standard that material in the advertisements is or might be contrary to.

That leaves us with what the complainant has raised, namely, that the advertisements involve one or more individual as "hiding" their "addiction" to gambling/betting.

While I might be persuaded that encouraging an addict to hide their addiction is contrary to prevailing community standards, I don't agree that any material in the advertisements in question, or the advertisements themselves when taken as a whole, depict any individual in that way.

As for the AANA Wagering Advertising and Marketing Communication Code

(Wagering Code), I submit as follows:

(a) Lottoland Australia's licensed product is a betting product, not a lotto or lottery product;

(b) nothing in the advertisements in question contravenes any element of section 2 of the Wagering Code and this is patently clear on any reasonable and objective view; and

(c) if the ASB, once it has reviewed the advertisements in question and this response, considers that any element of section 2 of the Wagering Code has been contravened, the ASB should provide full and reasoned written details of that position and we will respond within a reasonable timeframe.

For completeness, the AANA Code for Advertising and Marketing Communications to Children and the AANA Food and Beverages Marketing and Communications Code do not apply.

Summary

In my view:

(a) none of the material in the advertisements in question breaches or contravenes the Ethics Code or the Wagering Code;

(b) the complaint is unfounded and should be dismissed; and

(c) if the ASB takes a different view, it should detail its reasons why and give Lottoland Australia the opportunity to respond to those reasons.

As noted above, Lottoland Australia reserves its rights and requests the opportunity to make further submissions if the ASB considers there is any merit to the complaint.

Finally, we do not agree to a licence to the ASB to copy, reproduce or use our advertisements for the purpose of achieving the objects of the ASB or any other purpose. Receipt of this response is not to be taken or deemed to be the grant of such a licence. If the ASB wants to discuss a licence, we will consider it at the time of a request.

Additional response provided by advertiser:

In our opinion, the ads don't portray, condone or encourage excessive participation in wagering activities, as required by the guidelines set out in section 2.8 of the Wagering Code. The clear emphasis of that section of the Code is towards excessive participation in wagering activities. The Lottoland ads show how much people are attached to their mobile phones, and not to the extent of their gambling.

We continue to reserve our right to make submissions in relation to any contrary view the ASB may have.

THE DETERMINATION

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

The Board noted the complainants’ concerns that the advertisement depicts a person with a gambling addiction trying to hide it from their family.

The Board viewed the advertisement and noted the advertiser’s response.

In relation to the advertiser’s concerns about the response time required by the Advertising Standards Bureau, the Board noted that all advertisers are given 7 calendar days to provide a response. This timeframe ensures timely completion of cases. It provides a reasonable time for responsible advertisers to respond to concerns raised by complainants at the same time ensuring that complainants’ concerns are addressed in a timely manner. The Board noted advertisers can request an extension to the response date if needed, and while ensuring advertisers are provided adequate natural justice to respond to complaints, the Bureau’s role as secretariat was to ensure that advertisers did provide a response in a reasonable timeframe so cases can be resolved in a timely manner and not be unduly delayed.

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 considered Section 2.8 of the Wagering Code which provides: “Advertising or Marketing Communication for a Wagering Product or Service must not portray, condone or encourage excessive participation in wagering activities.”

The Board noted the Practice Note to Section 2.8 of the Wagering Code which provides: “Simply depicting regular wagering, for example as a routine weekend pursuit during a sporting season, does not equate to portraying excessive participation. An advertisement or marketing communication would portray, condone or encourage excessive participation in wagering activities where it depicts...wagering taking a priority in a participant’s life...”

The Board also noted case 0447/16 which was considered by the Independent Reviewer who commented that:

“Section 2.8 of the Wagering Code 1. Interpretation of ‘wagering activities’ ...

Tabcorp denied that there was any ‘direct portrayal of gambling or wagering’. That is the case. Nonetheless, the depiction is implied. The advertisement depicts the men referring to the Form on the ‘app’. This reference, together with the sideways glance of the man shown in a small group suggesting his anticipation - ‘now let’s see what will be the outcome’ - coupled with the intensity of the men’s excitement while watching the horse race, implies that the men’s interest is heightened because they have used the ‘app’ to bet. The reviewer finds no ‘substantial flaw’ in the finding of the Board that the advertisement depicts a wagering activity.

2. Portrayal of ‘excessive participation’ in wagering activities ... Tabcorp argued that, if the Independent Reviewer agreed with the Board’s interpretation that the advertisement did depict ‘wagering activities’, then the only interpretation is that the depiction did not amount to excessive participation. This view was in line with that of the minority of the Board, namely, that an advertisement depicting a one-off boys’ weekend could not be regarded as excessive participation and that it could not reasonably be asserted that the men’s placement of one bet, if that occurred, was excessive. The emphasis in the Code is on ‘excessive participation’. A one-off activity can be excessive in its lack of moderation. ...”

The Board noted, based on its view in 0447/16, that it is not necessary for an advertisement to show the placement of a wager in order to depict wagering activities, and that participating in wagering activities can be excessive even if what is depicted is only one event of participation.

The Board noted the current advertisement. The Board noted that in all three versions there is no depiction of placement of a wager – however in the Board’s view the depiction of the grandmother in advertisements 1 and 2 logged onto the Lottoland site and taking strong interest in the site, is, in the context of these advertisements, a depiction of participation in wagering activities. Similarly in advertisement three the depiction of the grandson under the table logged into the website is determined by the Board as him participating in wagering activities.

The Board noted version 1 of the advertisement which shows a grandmother pretending to take a photo of her family whilst at a barbeque but she actually has the Lottoland website open on her phone, not the camera. The Board noted the light-hearted tone of the advertisement. A minority of the Board considered that most grandmothers would welcome the chance to take a photo of their family and in their view the depiction of a grandmother being devious and lying about what she is doing with her phone normalises gambling, suggests that it is an activity you should hide from your family and suggests that this woman has a problem with gambling as she is unable to even participate in a family social gathering without accessing a wagering website. The minority of the Board considered that the depiction of a grandmother using her phone to access a wagering website and lying about it to her family suggests that wagering is taking a priority in her life. The minority of the Board considered that the advertisement is not strongly condoning or encouraging excessive participation, but that it is portraying her excessive participation in wagering activities.

Following considerable discussion however, the majority of the Board considered that although the grandmother was ignoring the rule of placing mobile phones in a bowl and then pretending to take a photo with her phone so she could still look at the Lottoland website, in their view this scene is not suggestive of excessive participation in wagering activities but rather a depiction of a grandmother being cheeky in avoiding the family's no-phone rules even though her family appear to know what she is up to, and there is no suggestion in this advertisement that this is indicative of excessive participation in wagering activities but rather is a one-off event. The majority of the Board considered that this version of the advertisement did not breach Section 2.8 of the Wagering Code.

The Board noted version 2 of the advertisement which shows a grandmother telling her family to place their mobile phones in a bowl before going to stand behind the kitchen bench where her own mobile phone is placed inside a cookbook where she can see it but her family can't. The Board noted that the grandmother's approach appears to be "do as I say, not as I do" and a minority of the Board the depiction of a person who is unable to interact with her family without accessing a wagering website, and who appears to be actively hiding her behaviour, is suggestive of wagering taking a priority in her life which in the Board's view portrays excessive participation in wagering activities.

The majority of the Board however considered that the advertisement was light-hearted and that, consistent with its determination against the first version of the advertisement, the grandmother's actions were sneaky but there was no suggestion that this was something she always did and she was in any case still actively preparing a meal for and interacting with her family members and guests. The majority of the Board noted the grandmother is talking about the product to her family and considered that it was reasonable to depict the product in the advertisement and in their view while the advertisement demonstrated the grandmother's preference for the product there was no suggestion that she was addicted to it or that she was using the product in an excessive manner that would breach Section 2.8 of the Wagering Code.

The Board then noted version 3 of the advertisement which shows the grandmother placing her mobile phone in a bowl with other family members' phones then asking where John is before the camera pans back to show us that John is under the table using his phone to access the Lottoland website.

The Board noted the advertiser's response that the focus of the advertisement is how much people are attached to their mobile phones, and not to the extent of their gambling but considered that the advertised product is a wagering product that can be accessed via a mobile phone and in the Board's view the focus is on the product itself and not the reliance of phones.

A minority of the Board considered that the depiction of John hiding under the table suggests he wants some peace and quiet and in their view there was no suggestion that John had a wagering addiction or was trying to hide it.

Following considerable discussion however the majority of the Board considered that the depiction of John hiding in order to use his phone to access a wagering website is suggestive of wagering being something secretive that should be hidden from family and or friends. The Board noted that unlike in the first two versions of the advertisement where the grandmother

is still shown to interact and engage with her family, in this version of the advertisement the person using the product has isolated himself from the family and considered that this is a depiction of a person who allows wagering to become a priority in their life and that in accordance with the AANA Practice Note to the Wagering Code, this is an example of a depiction of excessive participation in wagering activities.

Based on the above discussion, the majority of the Board considered that the third version of the advertisement depicts wagering (in this instance using a mobile phone to access a wagering website while hiding from family members) as having priority in a person's life and therefore portrays excessive participation in wagering activities.

The Board noted that when viewed together, all three versions of the advertisement do amount to a depiction of excessive participation in wagering activities by the Grandmother figure but noted also that the Board is required to view each advertisement on its individual merits.

The Board dismissed complaints against versions 1 and 2 of the advertisement. The majority of the Board determined that the third version of the advertisement did breach Section 2.8 of the Wagering Code.

Finding that the third version of the advertisement did breach Section 2.8 of the Wagering Code, the Board upheld the complaints.

THE ADVERTISER'S RESPONSE TO DETERMINATION

As discussed, we disagree with the determination however, out of respect for the process we will discontinue Ad 3 (under the table) for commercial reasons, this should not be considered an acceptance of the decision.

In addition we would welcome a briefing from a representative from the Advertising Standards Bureau to our marketing team to ensure we have a clear understanding of all legislation.

