



Case Report

1	Case Number	0028/18
2	Advertiser	Lottoland
3	Product	Gaming
4	Type of Advertisement / media	TV - Free to air
5	Date of Determination	07/02/2018
6	DETERMINATION	Dismissed

ISSUES RAISED

- Other Social Values
- 2.6 - Health and Safety Within prevailing Community Standards
- 2.7 - Native Advertising Advertising not clearly distinguishable
- 2.8 - Excess participation Condone or imply excess participation
- 2.9 - Pressure to gamble Disparage abstention

DESCRIPTION OF THE ADVERTISEMENT

A series of television advertisements that initially look like news bulletins. The newsreader states that celebrations are happening all over Australia and we see footage of someone doing a dance after winning.

THE COMPLAINT

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

It states breaking news and at first seems very legitimate and like a news ad. I don't think that it should be made this way. It may desensitise people to real issues and real breaking news. Also, I think the time slot is far too early. It makes it seem like a game, not a potentially life crippling habit.

This ad encourages irresponsible gambling. Gambling (when participated in responsibly) does not and should not involve the workplace. As a gambling counsellor this ad is very

concerning as it advocates irresponsible and uncontrolled gambling.

In one part of the advert it features a woman in an office checking her computer screen before breaking out into dance. The reporter character refers to the other people in the office as her colleagues making it clear that the setting is a workplace environment. The reporter also makes it clear that the draws occur every four minutes indicating that the woman is actively gambling in the workplace. The workplace is not a location for safe and healthy gambling and not being able to contain your gambling to your free time to is a key and widely recognised indicator of problem gambling behaviour. In this case due to the rapid nature of the kenoland product being highlighted, it indicates to me that the woman is seeing her work performance impacted by her gambling.

It's for these reasons I believe the advert contains excessive gambling and breaches Section 2.8 of the Wagering Advertising & Marketing Communication Code.

Every time the add is on I jump up to see what the emergency is. It is bush fire season and we all need to be alert to emergencies. I feel that people may become complacent to the emergency warnings that emergency services put up on the TV because the add stops people listening to this kind of warning. It makes a mockery of our warning system. People will stop listening.

This advertisement falsely purports to be a news flash from within a news tv station, when it shows 3 people doing a certain very similar gig on winning a prize on Lottoland. The fact that one could falsely degrade any advertisement by depicting its product as a news flash, suggesting a degree of genuineness in what it is promoting is deplorable. I am a Channel 7 viewer, and not against responsible gambling, but this advert crosses the line for good taste and makes a mockery of genuine advertising.

THE ADVERTISER'S RESPONSE

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

Lottoland refers to letters received from the ASB dated 17 and 22 January 2017. Those letters set out copies of 7 complaints received about Lottoland's television advertisements relating to its "Kenoland" product offering.

Lottoland thanks the Case Managers for agreeing to our request for an extension of time (to 30 January 2018) for providing this response.

Lottoland has prepared this response on the basis of the material supplied in the ASB's 2 letters. Lottoland assumes that the Board will not consider or rely on any other material, nor quote any other complaint material, in its reasons or findings.

The Case Managers have requested that Lottoland address in this response all applicable AANA advertiser codes. The reasons given for this is that the Case Managers have not viewed the advertisements in question and the Board will review the material in its entirety against section 2 of the Advertiser Code of Ethics (Code).

Lottoland notes that it is licensed in the Northern Territory to provide sports betting services

to customers in Australia and the product advertised is a wagering product or service as defined by the Code.

Lottoland also notes that the “Kenoland” product draw winners every 4 minutes during operation times. The relevant regulatory body in the Northern Territory has approved this multiple draw format. Lottoland notes that regular draws are a feature of the game of keno when played in pubs and clubs in various jurisdictions in Australia, with winning draws minutes apart. Accordingly, players of the game are used to multiple draws with small time periods in between.

Lottoland submits the following regarding the applicability of each sub-section of section 2 of the Code, referring to each of the sub-section by number:

- *2.1 – the advertisements do 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. Nor do the complaints allege this;*
- *2.2 – the advertisements do not employ sexual appeal in a way or manner described in this sub-section, or in any way or manner whatsoever. Nor do the complaints allege that it does;*
- *2.3 – the advertisements do not present or portray violence in a way or manner described in this sub-section, or in any way or manner whatsoever. Nor do the complaints allege that it does;*
- *2.4 – the advertisements contain no sex, sexuality or nudity as mentioned in the sub-section. Nor do the complaints allege that they do;*
- *2.5 – the advertisements use language that is appropriate in the circumstances and contain no strong or obscene language. The complaints do not allege that it does;*
- *2.6 – the advertisements do not, in Lottoland’s view, depict material contrary to prevailing community standards (as that term is defined in the Code) on health and safety. Lottoland does not agree that the advertisements will impact on how people will react to real emergency bulletins, nor that they will stop people listening to real warnings. Lottoland consider it ludicrous to suggest that the advertisements may result now or in the future in sending viewers “...into panic”, as one complainant state; and*
- *2.7 – the advertisements are clearly advertising and marketing communications. The reasons for this include:*
 - o in the 15 second versions of the advertisements, the banner material comes on to the bottom of the screen at the 6 second mark. In the 30 second version, the banner comes on at the 15 second mark. If a viewer had not already realized what the advertisements were about before those points, the banner would clearly alert them to it;*
 - o the background to each “news reader” does not contain television station imagery, colours or livery. Real news bulletins on breaking news normally contain some imagery or logo of the station. The lack of this in the advertisements would at least make a viewer stop and think about whether or not the advertisement is a real news bulletin;*
 - o the “news readers” used in the advertisements are actors and not any of the usual or recognised news readers for the stations. Again, this would of itself make a reasonable viewer stop and think; and*
 - o breaking news bulletins on breaking news are not always about emergencies and therefore to suggest that the Lottoland advertisements will make people ignore, or stop people listening to, real emergency bulletins or, as 1 complaints alleges, “make a mockery” of our warning system or are an exaggeration and unrealistic.*

Lottoland also submits that the AANA codes relating to advertising and marketing to Children and Food and Beverage have no application due to the subject matter of the advertisements.

In relation to the Wagering Advertising and Marketing Communications Code (Wagering Code), Lottoland submits as follows, using the sub-section numbers set out in the Wagering Code:

- *2.1 – the advertisements are not directed primarily to Minors. During the advertisements a banner comes up that contains a clear message that minors are not able to bet on the service. The complaints do not allege that the advertisements are directed to minors;*
- *2.2 – the advertisements do not depict a person who is a Minor. The complaints do not allege that they do;*
- *2.3 – the advertisements do not depict a person aged 18-24 years old engaged in wagering activities. The complaints do not allege that they do;*
- *2.4 – the advertisements do not portray, condone or encourage wagering in combination with the consumption of alcohol. The complaints do not allege that they do;*
- *2.5 – the advertisements do not state or imply a promise of winning. There is no suggestion in the advertisements that winning will be a definite outcome of participating in Lottoland’s offering, or in wagering generally. The complaints do not allege that they do;*
- *2.6 – the advertisements do not portray, condone or encourage participation in wagering activities as a means of relieving a person’s financial or personal difficulties. There is no reference to salary or debts or anything playing on a consumer’s fears of financial pressures. The advertisements do not present wagering as a viable alternative to employment. There are no expressions of any financial difficulty that winning would relieve. The complaints do not allege that the advertisements portray, condone or encourage participation in Lottoland’s service offering as a means of relieving a person’s financial or personal difficulties;*
- *2.7 – the advertisements do not state or imply a link between wagering and sexual success or enhanced attractiveness. The complaints do not allege that they do; and*
- *2.9 – the advertisements do neither of portraying, condoning or encouraging peer pressure to wager nor disparaging abstention from wagering activities. There is nothing in them that encourages criticism or ridicule for not engaging in wagering activities or mocks non-participants. The complaints do not allege that they do.*

In relation to sub-section 2.8 of the Wagering Code, Lottoland submits as follows:

- *the advertisements do not portray, condone or encourage excessive participation in wagering activities;*
- *there is nothing in them that depicts participants wagering beyond their means;*
- *there is nothing in them that depicts wagering taking priority in a participant’s life. All they are showing is the happiness and joy of a person winning a bet. None of the advertisements depict anyone around the winner as being distressed or concerned. If anything, after they realize the happiness of the winner, they are smiling and sharing the moment with the winner;*
- *there is nothing in them that depicts prolonged and frequent wagering to improve a participant’s skill in wagering. Indeed, there is no depiction of any of the winners actually betting, before or after they celebrate their win;*
- *most members of the community would recognise that doing funny celebratory dances*

in response to a win are not unrealistic. None of the advertisements imply that you will definitely win if you use Lottoland's products or service, or make any other claims about winning;

- none of the advertisements show any of the winning/dancing individuals placing further bets or on any events, and there is no indication that further bets will lead to winning;*
- as keno is a game that is traditionally offered on a multiple bet basis with small time periods between the placement and call on bets, offering bets every 4 minutes is not in excess of the usual or proper limit or degree and is not excessive in the context of the game of keno. In that sense, offering a winning opportunity every 4 minutes does not go beyond ordinary or proper limits and is not, in that context, excessive; and*
- the 2 gambling related complaints refer to one of the dancing scenes in some of the advertisements occurring in the workplace and one of those 2 complaints alleges that the woman portrayed "...is seeing her work performance impacted by her gambling". It appears that this complaint is suggesting that the depiction of the woman becoming aware of her winning at work somehow suggests that her gambling is taking priority in her life. Lottoland disputes that most members of the community would agree with this view and that they would recognise the humorous and celebratory tone. If anything, the woman is celebrating her win, which could have been on a bet she made before she commenced working, and her level of excitement suggests that winning is an unusual outcome that surprises and pleases her.*

In relation to the fact that the "Kenoland" offering is made available every 4 minutes, Lottoland notes that the Independent Reviewer in Case Number 0447/16 (relating to advertisements by Tabcorp) stated (at page 11 of the case report):

"Whether the regularity or frequency of the participation is an indicator of what is 'excessive' is not clear from the Practice Note and it would be useful for the AANA to clarify this issue in its next revision to the supporting documentation to the Wagering Code."

Lottoland agrees with that statement and submits that the Board must accept that the offering of "Kenoland" every 4 minutes is not a matter that is relevant to the Board's consideration of the current 7 complaints. That fact is not relevant to the determination of the Board based on the relevant code. Nor is it open to the Board to use that fact to determine that the wagering activity contained in the advertisements in question is in any way "excessive participation" in gambling.

Lottoland wishes to add a specific reference to the 2 gambling related complaints. The first of these is the complaint in which the complainant states that she is a "gambling counsellor". As such, the complainant makes a number of questionable statements, implying that they are the opinions of an expert in problem gambling. The statements only relate to the advertisements that show a woman celebrating a gambling win while at work and are that this advertisement:

- "...encourages irresponsible gambling"; and*
- "...is very concerning as it advocates irresponsible and uncontrolled gambling".*

The complainant also states that "...[g]ambling (when participated in responsibly) does not and should not involve the workplace".

As well, Lottoland refers to the second gambling related complaint, where the complainant states that "...[t]he workplace is not a location for safe and healthy gambling and not being able to contain your gambling to your free time to [sic] is a key and widely recognised

indicator of problem gambling behaviour”.

In response to these complaints/assertions, Lottoland submits that:

- *the first complainant is purporting to express an opinion as an expert;*
- *the opinions expressed are not supported by any evidence or proof which substantiates them;*
- *the Board’s role is to consider and determine whether any section of the relevant codes has been breached;*
- *the Board should be very careful in accepting the opinions of a complainant who purports to be an expert or who purports to express an expert opinion;*
- *if a complainant expresses an opinion, that opinion must be supported by evidence to substantiate the opinion;*
- *where a complainant purports to be an expert, it is further necessary for that person to support their opinions with evidence;*
- *the purported expert opinions expressed by the first of these complainants should not be considered by the Board as those of an expert; and*
- *these 2 complaints should only be considered within the confines of the relevant parts of the relevant code.*

In Lottoland’s submission, the other 5 of the 7 complainants seem to be complaining about the format and presentation of the advertising, while they know and realize that advertisements are just that – a catchy means of advertising and marketing a perfectly legal betting service.

In summary, in Lottoland’s view none of the specific sub-sections of an applicable code appear to have been breached.

THE DETERMINATION

The Advertising Standards Board (“Board”) considered whether this advertisement breaches the AANA Wagering Advertising and Marketing Communication Code (Wagering Code) and the advertising Code of Ethics (the Code).

The Board noted the complainant’s concerns that the advertisement encourages gambling suggesting it can change your life.

The Board considered that the current advertisement is an advertisement for Lottoland, an operator licenced to provide wagering products or services to customers in Australia and therefore the provisions of the Wagering Code apply.

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

The Board considered Section 2.5 of the Code. Section 2.5 state that: “Advertising or Marketing Communication for a Wagering Product or Service must not state or imply a promise of winning.”

The Board noted the advertisement is a series of television commercials that initially look like news bulletins. The newsreader states that celebrations are happening all over Australia and we see footage of someone doing a dance after winning.

The Board noted that gambling and wagering products are legally allowed to be advertised and the Board can only consider the content of the advertisement. The Board noted that some members of the community would prefer that this type of advertising not be allowed however, discussions around the promotion of gambling products in general is not a matter for the Board. The Board noted that its role is to consider the content of advertising and marketing communications and not the product or service being promoted.

The Board noted the complainants' concerns that the advertisement states that every four minutes someone wins through Lottoland, and that this implies winning is likely.

The Board noted the practice note to the wagering code that states 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."

The Board noted the advertisement is made to look like news bulletins. The newsreader states that celebrations are happening all over Australia and we see footage of someone doing a dance after winning, and that a new celebration is happening every four minutes.

The Board considered the nature of the Lottoland proposition, where customers can wager to win significant international lotto or lottery jackpots.

The Board noted the advertiser's response which stated that the "Kenoland" product draw winners every four minutes and that there is no suggestion in the advertisement that winning will be a definite outcome for all participants.

The Board considered that it is reasonable for an advertiser of a wagering product to refer to the frequency of draws and to depict people that have won and noted that the advertiser does not imply that winning would be a definite outcome.

The Board considered that the advertisement did not breach section 2.5.

The Board then 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 considered whether the advertisement portrayed 'excessive' participation in wagering activities.

The Board noted the complainants' concerns that the advertisement depicts one woman participating in gambling at work and that this, in combination with draws being offered every four minutes, is a depiction of excessive gambling.

The Board noted the advertisement is a series of television commercials that initially look like news bulletins. The newsreader states that celebrations are happening all over Australia and we see footage of someone doing a dance after winning. In different advertisements these people are shown on a bus, in an office and at home.

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:

- participants wagering beyond their means;
- wagering taking priority in a participant’s life;
- prolonged and frequent wagering to improve a participant’s skill in wagering.

Whilst the Practice Note lists three examples the Board considered that this did not restrict the application of Section 2.8. The Board considered that the depiction in the advertisement did not meet any of the examples set out in the Practice Note, so then considered whether the depiction would be considered as ‘excessive’ taking into consideration the definition of excessive.

The Board noted the definition of ‘excessive’ (Macquarie Australian Encyclopedic Dictionary 2006) as being ‘exceeding the usual or proper limit or degree; characterized by excess.’ The Board also noted that ‘Excess’ includes the definition of ‘going beyond ordinary or proper limits.’

The Board noted it had previously upheld complaints about excessive participation in wagering activities in case 0447/16, 0459/17 and 0492/17 where wagering appeared to take priority in a participant’s life or participants went beyond ordinary or proper limits.

In contrast, in the current case, the Board considered that overall the advertisement is providing information about the Lottoland wagering product, how often draws occur and provides examples of potential outcomes. The Board considered that the advertisement does not suggest that viewers should bet outside of their means.

The Board considered that depicting somebody celebrating a win in an office setting does not in itself suggest the woman often bets at work, or depicts that participates in gambling to excess. The Board also considered that the woman is shown celebrating a win by dancing in the office, but it is not shown when and where she placed the bet.

The Board considered that it is reasonable for an advertiser of a wagering product to refer to the frequency of draws and that this is not a suggestion that anyone should participate every four minutes.

The Board considered that the advertisement was not condoning or encouraging excessive participation and in the Board’s view the message taken from the promotion is not a portrayal of or encouragement for, excessive participation in wagering activities.

The Board determined that the actions of the man are not a depiction that breaches Section 2.8 of the Wagering Code.

The Board then considered whether this advertisement breached Section 2 of the Advertiser Code of Ethics (the “Code”).

The Board noted the complainants’ concerns that the advertisement is not clearly identified as advertising material and is therefore misleading.

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 considered the complainants’ concerns that the advertisement may cause people to panic and believe there is an emergency, or may make them not pay attention to emergency broadcasts in the future.

The Board considered that while the advertisement may initially resemble a news bulletin there is no sense of emergency or urgency. The Board considered that not all real news updates or bulletins relate to emergencies and that a news item on its own is unlikely to cause people to panic.

The Board considered that the interpretation that this advertisement may cause people to ignore emergency broadcasts in the future to be unlikely.

The Board considered that the advertisement did not depict material contrary to Prevailing Community Standards on health and safety. The Board determined that the advertisement did not breach Section 2.6 of the Code.

The Board considered whether the advertisement complied with Section 2.7 of the Code which requires that “Advertising or Marketing Communications shall be clearly distinguishable as such to the relevant audience.”

The Board noted the advertisement is designed to look like a news bulletin reporting on people celebrating wins every four minutes.

The Board noted the advice provided in the Practice Note to Section 2.7: “If it is clear to the relevant audience that the content is commercial in nature (for example by the nature of the content, where the content is placed, how consumers are directed to the content, the theme, visuals and language used, or the use of brand names or logos), then no further disclosure or distinguishing element is needed.”

The Board considered that it may not be immediately clear within the first few seconds that this is an advertisement, however considered after this time the use of logos, disclaimers and wording would make it clear to most viewers that this is an advertisement.

The Board considered there is space for parody and satire in advertising and considered that although the news bulletins may at first appear real, the advertisements do not use real newscasters or station branding and is clearly different from a genuine news bulletin.

The Board considered that this advertisement is clearly distinguishable as advertising material to the relevant audience and determined that the advertisement did not breach Section 2.7 of the Code.

Finding that the advertisement did not breach the Code or the Wagering Code on other grounds, the Board dismissed the complaint.

