



Ad Standards Community Panel
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Ad Standards Limited
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Case Report

1. Case Number :	0034-22
2. Advertiser :	Buddybet
3. Product :	Gambling
4. Type of Advertisement/Media :	TV - Free to Air
5. Date of Determination	23-Feb-2022
6. DETERMINATION :	Dismissed

ISSUES RAISED

AANA Code of Ethics\2.7 Distinguishable advertising

DESCRIPTION OF ADVERTISEMENT

This material complained about was a segment of live television tennis programming, in which a man who attended the tennis match was visible and wearing a branded t-shirt.

THE COMPLAINT

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

Was not identified as "advertising" yet was a promotional strategy in an arena where sports gambling has been intentionally removed.

THE ADVERTISER'S RESPONSE

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

We acknowledge and apologies for any issues caused.



The individual identified in your email dated 9 February 2022 is an employee of Buddybet, Mr Jackson Byrne.

The employee also has a profile outside of Buddybet, an alter ego known as “G-Freak”. In his capacity as G-Freak, the employee volunteered to wear a Buddybet singlet to the Australian Open.

During the telecast of the Australian Open, G-Freak appeared on Channel Nine’s television broadcast of the Australian Open. This was out of our control and we did not consider that this would fall within the scope of Advertising.

This appears to have occurred in between points of the Nick Kyrgios and Daniel Medvedev match.

The length or frequency of G-Freak’s television appearance is unknown.

Insofar as Section 2 of the AANA Code of Ethics is concerned, we submit that G-Freak’s television appearance does not breach sections 2.1 to 2.6.

In relation to the issue raised, being section 2.7: Distinguishable Advertising, we make the following comments:

- We did not anticipate that G-Freak would be broadcasted during Channel Nine’s telecast of the Australian Open;*
- G-Freak’s appearance on television was outside of Buddybet’s control; and*
- G-Freak was not paid for attending the Australian Open, however he was reimbursed for his ticket.*

In circumstances where Buddybet is a wagering product, the Wagering Advertising Code applies to all of our advertisements. Insofar as the Wagering Advertising Code is concerned, we submit that G-Freak’s actions do to not contravene any of the provisions in this section.

Finally, Buddybet is a new business, having only commenced operations on 23 December 2021, have not undertaken this type of activity previously and have limited knowledge of the obligations under the Code. That said, we hereby undertake that if G-Freak or any other influencer is engaged in the future, we will make it clear to the audience that it is advertising.

THE DETERMINATION

The Ad Standards Community Panel (the Panel) considered whether this advertisement breaches Section 2 of the AANA Code of Ethics (the Code).

The Panel noted the complainant’s concern that the scene was a promotional strategy in an arena where sports gambling has been intentionally removed.



The Panel viewed the advertisement and noted the advertiser's response.

The Panel noted that the concern regarding promotion in an arena where sports gambling has been intentionally removed is not a matter covered by the provisions of the Code, but noted that Buddybet is not a sports gambling platform providing wagering services but rather a platform in which friends can bet each other on anything they like (eg how many poodles will be at the dog park).

Section 2.7: Advertising shall be clearly distinguishable as such.

Is the material advertising?

The Panel noted that it must consider two matters:

- Does the material constitute an 'advertising or marketing communication', and if so
- Is the advertising material clearly distinguishable as such?

Does the material constitute an 'advertising or marketing communication'?

The Panel noted the definition of advertising in the Code. Advertising means:

“(a). any advertising, marketing communication or material which is published or broadcast using any Medium or any activity which is undertaken by, or on behalf of an advertiser or marketer,

- over which the advertiser or marketer has a reasonable degree of control, and
- that draws the attention of the public in a manner calculated to promote or oppose directly or indirectly a product, service, person, organisation or line of conduct,

(b). but does not include:

- labels or packaging for products
- corporate reports including corporate public affairs messages in press releases and other media statements, annual reports, statements on matters of public policy
- in the case of broadcast media, any material which promotes a program or programs to be broadcast on that same channel, station or network.”

The Panel noted that the material identified as an advertisement by the complainant was a segment from a live tennis match which showed the crowd, with the camera at one point focusing on a man in the crowd wearing a wig and a blue t-shirt with “Buddybet” written across the front.

The Panel considered that this draws the attention of the public in a manner calculated to promote a product/organization.

The Panel noted that the man depicted at the tennis event is an employee of the advertiser however also has a personal alter ego known as “G-Freak”, independent of



Buddybet. The Panel considered however that the advertiser had paid for the man to attend the tennis and that while he was present as his alter ego, he was representing the business.

The Panel accepted that there was no arrangement between Buddybet and Channel 9 to ensure the man appeared in the broadcast. The Panel noted that the man appears to be unaware that he is being screened on television, as he does not look at the camera, point to his shirt or otherwise draw particular attention to himself at that moment.

The Panel considered that while the intention was likely to have been that the man appear on television, the advertiser had no control over whether that occurred.

The Panel noted that it had previously considered cases in which an advertiser had provided free product to an influencer with no obligation to post. In such cases:

“The Panel noted that in the case of gifts to influencers the context in which the product is given cannot be ignored. The Panel noted that influencers operate as an advertising medium utilised by businesses to promote their brands and products. The Panel noted that many influencers have agents and that businesses exist which put brands and influencers in touch with each other. The Panel noted that influencers are sometimes paid, and sometimes provided with free product. The Panel noted that influencers’ posts may also be created in circumstances in which there is no relationship context. The Panel considered that the Code’s requirements should be interpreted with its purpose in mind, that is to ensure that consumers are informed, and that influencers should be transparent about their relationships with brands. The Panel considered that the advertiser has undertaken the activity of giving a gift to an influencer, and in choosing to send the gift they are exercising a degree of control, and the post did draw the attention to the product.” Case 0323-21.

In such cases, the Panel has found that there is a benefit to the Influencer to promote the product and that in such promotions the circumstances surrounding the engagement should be disclosed. In the current case, the Panel accepted that the advertiser did not contact Channel 9 itself and did not offer any incentive to Channel 9 to broadcast images of the man. The Panel considered that while it may have been the hope of Buddybet that the employee was caught on camera or focussed on during crowd coverage, Buddybet had no control or influence over that occurring.

The Panel considered that in this instance Buddybet did not have a reasonable degree of control over the material being broadcast, and therefore the scene did not meet the definition of advertising in the Code.

2.7 conclusion

In the Panel’s view the material was not advertising, and therefore Section 2.7 of the Code does not apply.



Conclusion

Finding that the material did not meet the definition of advertising, the Panel dismissed the complaint.