

## Case Report

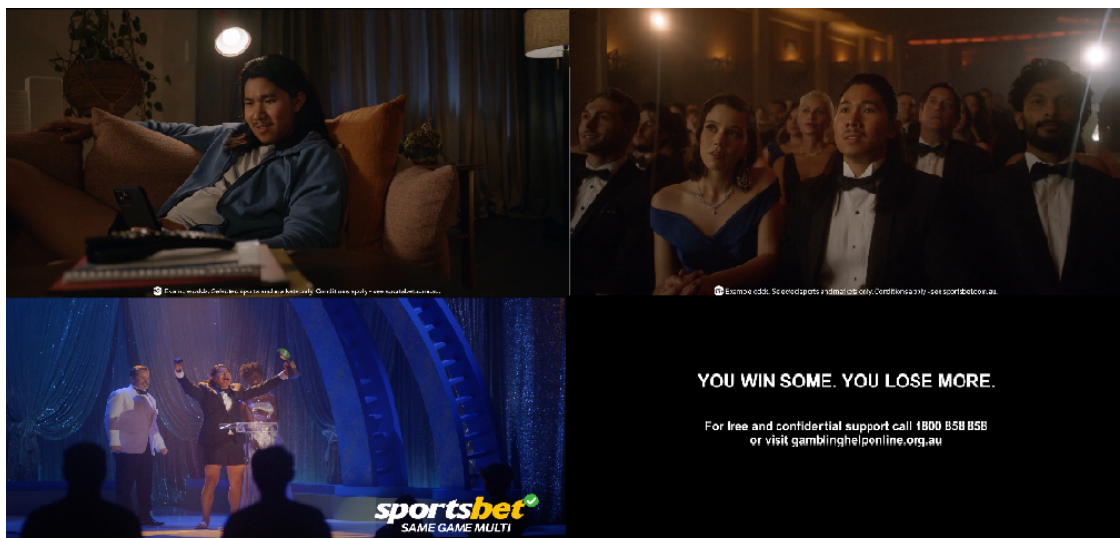
1. Case Number :	0062-23
2. Advertiser :	Sportsbet
3. Product :	Gambling
4. Type of advertisement/media :	TV - Free to Air
5. Date of original determination	26-Apr-2023
6. Original determination:	Upheld - Modified or Discontinued
7. IR recommendation:	Panel to Reconsider
8. Date of reviewed determination:	14-Jun-2023
9. Determination on review:	Upheld - Modified or Discontinued

### ISSUES RAISED

AANA Wagering Code\2.5 Promise of winning  
AANA Wagering Code\2.7 Sexual success or attractiveness  
AANA Wagering Code\2.9 Pressure to gamble

### DESCRIPTION OF ADVERTISEMENT

This advertisement opens with a man on a couch looking at his phone. He is shown to win his bet and the voice-over describes it as “feels like you’ve finally made it”. The scene swirls and transitions to him sitting at an awards show ceremony wearing a tuxedo. The awards announcers come on stage (one being Neighbours star Ryan Maloney). The awards being presented is "Most Outstanding Same Game Multi", and the man is shown to win. The crowd cheers and applauds and he gives an acceptance speech thanking his anytime goal scorers.



## THE COMPLAINT

Comments which the complainant/s made regarding this advertisement included the following:

*The SportsBet ad shown during the footy which depicted a punter 'winning' at an awards night a prize for his 'same game multi' glorified gambling and depicted unrealistic odds. It showed a punter clearly disappointed he didn't gamble the same multi and encouraged risky behaviour and peer pressure in gambling as well as adoration of gambling by the legions of clapping 'fans' who were 'applauding' the 'winner'. It used the false and dangerous narrative that you're just 'one bet away' from 'winning big' and thus 'winning' the literal applause of your friends and family. I'm disgusted as Nine and SportsBet both clearly know this plays straight into a dangerous and false narrative of many gambling addicts.*

*The Sportsbet ad depicting a man winning an award for the best multibet is blatantly promoting betting as a way to win. It is glamorising betting and not accurately representing the risk. The ad features Ryan Moloney from Neighbours.*

## THE ADVERTISER'S ORIGINAL RESPONSE

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

*Summary of response*

*Ad Standards has identified the Complaint as potentially raising issues with the following sections of the AANA Wagering Advertising Code (Code):*

*Section 2.5 – requires that wagering advertising ‘must not state or imply a promise of winning’;*

*Section 2.7 – requires that wagering advertising ‘must not state or imply a link between wagering and sexual success or enhanced attractiveness’; and*

*Section 2.9 – requires that wagering advertising ‘must neither portray, condone or encourage peer pressure to wager nor disparage abstention from wagering activities’.*

*Sportsbet strongly rejects any suggestion that the Advertisement breaches section 2.5, 2.7 or 2.9 of the Code (or any other section) for the reasons explained below.*

*No statement or implication of a promise of winning*

*Section 2.5 of the Code prohibits advertising for a wagering product or service that states or implies a promise of winning. The AANA’s Practice Note in respect of section*

*2.5 of the Code (Practice Note) clarifies that wagering advertising may promote a winning wager provided there is no direct or implied suggestion that winning will be a 'definite outcome' of wagering.*

*The Advertisement contains no statement or implication of a promise of winning. Rather, it depicts a punter placing a single successful same game multi-bet (SGM) with Sportsbet and concerns the emotions related to that wager only (discussed in further detail below).*

*At no point does the Advertisement in any way suggest – directly or impliedly – that a SGM or any other wagering product or service offered by Sportsbet is certain of success and the Community Panel has consistently found that reasonable viewers understand that gambling comes with an inherent possibility of loss.[1]*

*No link between wagering and sexual success or enhanced attractiveness*

*Section 2.7 of the Code prohibits wagering advertising that states or implies a link between wagering and sexual success or enhanced attractiveness. The Practice Note in respect of section 2.7 relevantly provides that 'it is acceptable to portray attractive people in [wagering] advertising, as long as the material as a whole does not link wagering with sexual success or enhanced attractiveness'.*

*The Advertisement contains no reference or element that links wagering with sexual success or enhanced attractiveness. Rather, as mentioned above, it depicts a punter placing a successful SGM with Sportsbet and dreaming-up a parallel between the emotions associated with that activity and those he might experience winning an award at a ceremony. Further, the absurd and unrealistic nature of the Advertisement is exaggerated by the punter being inappropriately dressed at the ceremony in tuxedo shirt/jacket with football shorts and thongs. In that context, the Advertisement is clearly a fictional analogy (underscored by the dream element) and promotes Sportsbet's SGM product through a humorous and harmless parody of the well-known Oscars ceremony setting.*

*Further, any suggestion that the admiration shown towards the successful punter in the Advertisement is excessive or implies that he is more sexually attractive is baseless. The Advertisement depicts a modest award ceremony and the crowd reacts to the winner's announcement and acceptance speech with balanced levels of applause and disappointment in a way that is consistent with that seen at the Oscars or similar event. The Advertisement contains no element or reference whatsoever which is linked to the punter's physical appearance or sexuality.*

*No peer pressure to wager or disparaging abstention from wagering activities*

*Section 2.9 of the Code prohibits wagering advertising that portrays, condones, or encourages peer pressure to wager or disparages abstention from wagering activities. The Practice Note elaborates by providing that wagering advertising will contravene*

*the prohibition if it criticises or ridicules non- engagement in wagering activities or disparages abstention from wagering, for example by mocking those who choose not to participate.*

*The Advertisement contains no element of peer pressure, disparagement, ridicule or anything similar. As mentioned above, the Advertisement depicts a fictional ceremony in which the punter receives an absurd award for the ‘Most Outstanding SGM’. Nowhere in the Advertisement, including the depiction of the award nominees or crowd, does a character pressure another character into performing any wagering activity or criticise or ridicule another character about choosing to abstain from participating in any wagering activity. Further, the reaction of the crowd to the winner’s announcement and acceptance speech for a \$50 winning bet cannot sensibly be interpreted as encouraging risky behaviour or peer pressuring others to engage in wagering activities.*

#### **Conclusion**

*For the reasons outlined above, Sportsbet strongly rejects any assertion that the Advertisement breaches section 2.5, 2.7 or 2.9 of the Code (or any other section) and submits that the Community Panel should dismiss the Complaint.*

*1 See Ad Standards Community Panel case no 0269-20 (9 September 2020): <https://adstandards.com.au/sites/default/files/reports/0269-20.pdf> and case no 0107-22 (25 May 2022): [https://adstandards.com.au/sites/default/files/reports/0107-22\\_0.pdf](https://adstandards.com.au/sites/default/files/reports/0107-22_0.pdf).*

#### **THE ORIGINAL DETERMINATION**

The Ad Standards Community Panel (Panel) considered whether this advertisement breaches the AANA Wagering Advertising and Marketing Communication Code (Wagering Code).

The Panel noted the complainants’ concerns that the advertisement:

- Implies you’re one bet away from winning big
- Encourages peer pressure to gamble
- Depicts adoration of fans because of the win.

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

The Panel 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.

### **Section 2.5 Advertising or Marketing Communication for a Wagering Product or Service must not state or imply a promise of winning**

The Panel noted the Practice Note to this section of the Wagering Code:

*“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 Panel noted the voice-over for the advertisement which states that the man has ‘finally’ won, suggesting that it is not his first attempt.

The Panel also noted that the awards night ceremony only shows one person winning an award for the ‘*Most Outstanding SGM*’. The Panel considered that this depiction would indicate to most viewers that not all players of the SGM product would win the game, and that there was no direct or implied suggestion that winning would be a definite outcome of participating.

The Panel noted the disclaimer at the end of the advertisement “You win some. You lose more.” The Panel considered that although this disclaimer was legally required, in this instance it does reinforce the concept in the advertisement that not everybody would win.

The Panel considered that most viewers would understand that purchasing a single game multi-bet comes with an inherent possibility of loss and that the advertisement did not imply a promise of winning if the service is used.

### **Section 2.5 Conclusion**

The Panel considered that the advertisement does not state or imply a promise of winning and determined that the advertisement did not breach Section 2.5 of the Wagering Code.

### **Section 2.7 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.**

The Panel noted that the Practice Note for this section of the Wagering Code states:

*“Licensed operators should also take care when characters in advertising are treated with admiration as a result of their wagering to avoid creating a link between wagering and enhanced attractiveness. Similarly, references to fame, being special or being a VIP should be treated carefully. For example, portraying the transformation of characters’ appearance after wagering can*

*create an implication that wagering could result in enhanced attractiveness and an improvement in self-image, which may breach the Code.”*

The Panel noted the advertiser’s response that the awards night was an imagined fictional scenario designed to describe the feeling of winning and contains no references to the man’s physical appearance or sexual success.

The Panel considered that while the advertisement is clearly fantastical and contains unrealistic elements, such as being inappropriately dressed in shorts and thongs for a formal awards ceremony, it does show a transformation of the man’s appearance that suggests that his attractiveness has been enhanced as a result of his win.

The Panel noted that the man is shown to go from sitting alone on a couch in casual clothing to being dressed in a tuxedo with a woman next to him celebrating his success.

The Panel considered that the advertisement portrays the positive transformation of the main character’s appearance and demeanour after winning. In addition, the advertisement shows him going from alone to being with another person. While the context of the advertisement is an imagined scenario, the Panel considered that it shows that the man’s self-image has improved after winning and he feels more attractive.

The Panel considered that the advertisement does show or imply a link between wagering and enhanced attractiveness.

## **2.7 Conclusion**

The Panel determined that the advertisement did state or imply a link between wagering and sexual success or enhanced attractiveness and determined that the advertisement did breach Section 2.6 of the Wagering Code.

### **Section 2.9 - 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.**

The Panel noted the Practice Note for Section 2.9 which states *“Advertising or marketing communication must not portray, condone or encourage criticism or ridicule for not engaging in wagering activities or disparage abstention from wagering, for example by mocking non-participants”*.

The Panel considered that while the advertisement does depict others celebrating the man’s win, it does not show anyone pressuring the man to wager. Further, the advertisement does not depict anyone disparaging abstention from wagering.

## **Section 2.9 Conclusion**

Finding that the advertisement does not contain any messaging which portrays, condones or encourages peer pressure to wager nor disparage abstention from wagering activities, the Panel determined that the advertisement does not breach Section 2.9 of the Wagering Code.

## **Conclusion**

Finding that the advertisement breached Section 2.7 of the Wagering Code the Panel upheld the complaints.

## **THE ADVERTISER'S RESPONSE TO ORIGINAL DETERMINATION**

*As set out in our letter dated 13 April 2023, Sportsbet strenuously denies that the Advertisement contravenes section 2.7 or any other section of the AANA Wagering Advertising Code (Code).*

*We look forward to receiving further correspondence from your office providing Sportsbet with the option to request an independent review of the Community Panel's determination. Sportsbet takes its obligations under the Code very seriously, and is deeply concerned by the Community Panel's determination. Accordingly, Sportsbet intends to request that an independent review of the Community Panel's determination be conducted.*

*Sportsbet respects the Community Panel's determination and has suspended distribution of the Advertisement via television until the outcome of the independent review process is known.*

## **REVIEW REQUEST**

Sportsbet takes its obligations under the AANA Wagering Advertising & Marketing Communication Code (Code) very seriously. Notwithstanding our commitment to compliance with the Code, Sportsbet is deeply concerned by the Determination insofar as it concluded that the Advertisement breached section 2.7 of the Code (Determination).

Sportsbet respectfully requests that the Independent Reviewer conduct a review of the Determination and to this end considers:

- there is an overwhelming (and most certainly a prima facie) case for review, such that Sportsbet's request should be accepted by the Independent Reviewer; and



- after conducting appropriate investigations, that the Independent Reviewer should recommend that the Panel review the Determination and dismiss the original complaints regarding the Advertisement.

### **The relevant prohibition and the Determination**

Section 2.7 of the Code prohibits wagering advertising that states or implies a “link” between wagering and sexual success or enhanced attractiveness.

In the Determination, the Panel concluded that the Advertisement shows or implies a link between wagering and enhanced attractiveness in breach of the Code because it “show[s] a transformation of the man's appearance that suggests that his attractiveness has been enhanced as a result of his win”.

Sportsbet respectfully submits that this conclusion was plainly wrong. Section 2.7 is clearly intended to stop advertisers from encouraging wagering by promoting a misconception that wagering will result in sexual success or enhanced attractiveness. The Advertisement does not promote either of those things. As explained in further detail below, the Advertisement does not refer to or depict (in any direct or implied way) sexual success or enhanced attractiveness. Even if it does contain such a reference (which is denied), the Advertisement cannot contravene section 2.7 of the Code because there is no “link” (as expressly stipulated in that section) between wagering and any sexual success or enhanced attractiveness.

Put another way, the Advertisement is not even the kind of advertisement in relation to which section 2.7 of the Code need even be considered. The Advertisement depicts a punter winning a bet. This does not lead to any sexual success or enhanced attractiveness. It leads to the punter experiencing what is obviously a fictitious, absurd, and humorous fantasy. The fantasy is the punter's alone, by which he is depicted at an obviously fictitious awards ceremony. He then wins an obviously fictitious award, at which time he appears on the stage in an absurd and unflattering outfit. The fact that he is accompanied at the awards ceremony by a female cannot – on any reasonable view – be said to amount to a depiction of “sexual success” or “enhanced attractiveness”.

The Advertisement is intended to (and does) promote the potential for punters to experience enjoyment and excitement after winning a bet. That is consistent with almost all wagering advertising in Australia (and elsewhere). To uphold a complaint under section 2.7 of the Code in respect of this Advertisement would set a very low bar and essentially be tantamount to banning wagering advertising in Australia by which a punter receives praise after a winning a bet. In that regard, only one other determination under section 2.7 of the Code has ever been made [1]. That was clearly a very different case, in which the main character was depicted partially naked in the shower – a setting which at least leaves open the question of whether a sexual subtext is being conveyed.



### **No reference to sexual success or attractiveness of main character**

The Determination indicates that the Panel found that the following elements of the Advertisement relate to the attractiveness of the main character:

- "the man is shown to go from sitting alone on a couch in casual clothing to being dressed in a tuxedo with a woman next to him celebrating his success";
- "the advertisement shows him going from alone to being with another person"; and
- "it shows that the man's self-image has improved after winning and he feels more attractive".

Sportsbet respectfully submits that the Panel was wrong to find that these elements relate to the attractiveness of the main character.

As explained above and in Sportsbet's response dated 13 April 2023, the Advertisement depicts a punter placing a successful same game multi-bet and dreaming up a parallel between the emotions associated with that activity and those he might experience winning an award at a ceremony. In that context, the punter's change in clothing and attendance at the awards ceremony with a female companion are merely features of his imagined fictional scenario. Such an imagined fictional scenario is a departure from reality. It cannot in any way represent or otherwise relate to the punter's actual sexual success or attractiveness – either in respect of the way in which he is viewed by others or his self-image.

There is no basis for finding that the main character's self-image improved or that he felt more attractive after being announced as the winner in the fictional scenario. After he is announced as the winner, the main character is shown smiling, moving to the stage and hugging the award presenter. These behaviours are all stereotypical features of an awards show, which solely indicate his utter happiness at winning the award. There is nothing whatsoever in the main character's behaviour or any other aspect of the Advertisement which suggests that the main character's self-image has improved after winning or that he feels more attractive. There is certainly no reference whatsoever to sexual success, whether implied or otherwise.

### **No depiction of enhanced attractiveness**

Even if the Advertisement is found to contain references to the attractiveness of the main character, this alone does not amount to a contravention of section 2.7 of the Code.

The AANA's Practice Note in respect of the Code (Practice Note) relevantly provides that:

- it is acceptable to portray attractive people in wagering advertising, as long as the material as a whole does not link wagering with sexual success or “enhanced attractiveness; and
- advertisers should take care when characters in advertising are treated with admiration, or there are references to fame, being special or being a VIP, to avoid creating a link between wagering and enhanced attractiveness. For example, portraying the transformation of characters’ appearance after wagering can create an implication that wagering could result in enhanced attractiveness and an improvement in self-image.

In other words, to contravene the section, there needs to be enhancement in attractiveness.

Sportsbet respectfully submits that the Advertisement does not depict any enhancement in attractiveness of the main character. To the contrary, the depiction of the main character being inappropriately dressed when he accepts the award (in tuxedo shirt/jacket together with football shorts and thongs) emphasises to the extent that the main character is and remains an "ordinary bloke" – with no enhancement to his attractiveness as a result of his wagering. The fact that the main character is depicted as feeling happy and excited as a result of his win does not mean he feels or appears more attractive.

### **Conclusion**

For these reasons outlined above, Sportsbet respectfully submits that there were substantial flaws in the Determination such that it is appropriate for the Independent Reviewer to conduct an independent review.

1 - Case Number 0116/18.

### **INDEPENDENT REVIEWER’S RECOMMENDATION**

I have been asked to review the decision in this case.

The advertisement relates to two complaints concerning Sportsbet’s Same Game Multi ‘Oscars’ television commercial.

The Community Panel concluded that the advertisement did state or imply a link between wagering and sexual success or enhanced attractiveness and decided that the advertisement breached section 2.7 of the Wagering Code.

### **Background**

The advertisement shows a man on a couch looking at his phone. He is shown to win his bet and the voice-over describes it as ‘feels like you’ve finally made it’. The scene

swirls and transitions to him sitting at an awards show ceremony wearing a tuxedo and accompanied by an attractive woman. The awards announcers come on stage (including a well-known 'Neighbours' star Ryan Maloney). The award being presented is 'Most Outstanding Same Game Multi', and the man is shown to win. The crowd for the most part cheers and applauds, although there are some less than delighted faces in the audience. He makes an acceptance speech thanking his anytime goal scorers. The advertisement closes with a warning 'You win some. You lose more' and a reference to a gambling online support service.

### **Complaints**

The two complaints are that the advertisements breached the Wagering Code in that, as summarized by the Community Panel (Panel) it:

- Implied you're one bet away from winning big
- Encourages peer pressure to gamble, and
- Depicts adoration of the fans because of the win.

In essence, the complaints were that the advertisement glamorized betting without accurately reflecting the risk.

In response to the Panel's findings Sportsbet suspended distribution of the Advertisement via television until the outcome of the independent review process is known.

### **Role of reviewer**

The Independent Reviewer has a limited but important role. Having decided to accept the complaint for review, the Reviewer considers the decision of the Panel and makes a recommendation. In doing so, the Independent Reviewer's opinion is to decide, in this case:

Whether there was a substantial flaw in the Community Panel's determination (determination clearly in error having regard to the provisions of the Codes or Initiatives, or clearly made against the weight of evidence).

The test depends on a finding of a 'substantial' or serious flaw in the Panel's reasoning in that, for example, the finding is clearly against the weight of evidence. The outcome of the review may be to uphold the Panel's decision or, if the Independent Reviewer finds such a flaw, the complaint is remitted to the Panel for reconsideration.

### **Panel's findings**

The Panel rejected any possible findings that the advertisement breached the following provisions of the Wagering Code:

- Section 2.5, Advertising or Marketing Communication for a Wagering Product or Service must not state or imply a promise of winning, and
- Section 2.9, 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.

The sole finding was that the advertisement breached Section 2.7 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.

The Practice Note to the Wagering Code states:

*“Licensed operators should also take care when characters in advertising are treated with admiration as a result of their wagering to avoid creating a link between wagering and enhanced attractiveness. Similarly, references to fame, being special or being a VIP should be treated carefully. For example, portraying the transformation of characters’ appearance after wagering can create an implication that wagering could result in enhanced attractiveness and an improvement in self-image, which may breach the Code”.*

The Determination based its findings on enhanced attractiveness on the following:

- *‘the man is shown to go from sitting alone on a couch in casual clothing to being dressed in a tuxedo with a woman next to him celebrating his success’*
- *‘the advertisement shows him going from alone to being with another person’;*  
*and*
- *‘it shows that the man’s self-image has improved after winning and he feels more attractive’.*

In conclusion, the Panel considered the advertisement does show or imply a link between wagering and enhanced attractiveness.

### **The advertiser’s response**

The advertiser in its initial response on 13 April 2023 rejected the findings, saying of the advertisement:

- The Wagering Advertising Code – Practice Note provides “it is acceptable to portray attractive people in [wagering] advertising, as long as the material as a whole does not link wagering with sexual success or enhanced attractiveness”.
- The advertisement “depicts a punter placing a successful SGM with Sportsbet and dreaming-up a parallel between the emotions associated with that activity and those he might experience winning an award at a ceremony. Further, the absurd and unrealistic nature of the Advertisement is exaggerated by the punter being inappropriately dressed at the ceremony in tuxedo shirt/jacket with football shorts and thongs. In that context, the Advertisement is clearly a

fictional analogy (underscored by the dream element) and promotes Sportsbet's SGM product through a humorous and harmless parody of the well-known Oscars ceremony setting.

- "...any suggestion that the admiration shown towards the successful punter in the Advertisement is excessive or implies that he is more sexually attractive is baseless. The Advertisement depicts a modest award ceremony and the crowd reacts to the winner's announcement and acceptance speech with balanced levels of applause and disappointment in a way that is consistent with that seen at the Oscars or similar event. The Advertisement contains no element or reference whatsoever which is linked to the punter's physical appearance or sexuality."

In its request for review on 23 May 2023, the advertiser responded as follows:

- The Panel's conclusion that the advertisement implies a link between wagering and enhanced attractiveness in breach of the Code "show[s] a transformation of the man's appearance that suggests that his attractiveness has been enhanced as a result of his win' was denied. As the advertiser noted 'the Advertisement does not promote either of these things. ... [T]he Advertisement does not refer to or depict (in any direct or implied way) sexual success or enhanced attractiveness. ... [T]here is no "link" ... between wagering and any sexual success or enhanced attractiveness".
- "The advertisement depicts a punter winning a bet. This does not lead to any sexual success or enhanced attractiveness. It leads to the punter experiencing what is obviously a fictitious, absurd, and humorous fantasy. The fantasy is the punter's alone, by which he is depicted at an obviously fictitious awards ceremony. He then wins an obviously fictitious award, at which time he appears on the stage in an absurd and unflattering outfit. The fact that he is accompanied at the awards ceremony by a female cannot – on any reasonable view – be said to amount to a depiction of 'sexual success' or 'enhanced attractiveness".

### **Consideration**

The advertisement does show the man winning a bet. What follows is an imaginary awards ceremony. The fact that is imaginary is initially indicated by the swirling of the visuals from the man on the couch in casual clothing to a transformation of the punter apparently in a tuxedo with an attractive woman at his side at an awards celebration.

The swirling motion of the advertisement gives an indication that the transformed image is an imaginary, not a genuine transformation, which negates the suggestion that this is reality. The imaginary nature of the depiction is enhanced by ridiculous elements of its elements.

There are elements of the awards ceremony that avoids glamorizing betting. The imaginary scene depicts an occasion such as the Oscars at which it is customary for

people attending to dress in glamorous clothing and generally to be present in couples. For the punter to be accompanied by a woman dressed attractively is accordingly standard and meets social expectations for such an occasion. The initial depiction of the man in tuxedo and the woman in appropriate dress, may imply a link between betting and glamour. That is as far as the implication reaches.

In the early sequence of the ceremony there is nothing to suggest a particularly close relationship between the couple. There is no overt touching of the pair nor evident sharing of special pleasure in each other's company. At that stage, of course, the punter has not been announced as a winner. After the announcement of the punter as the winner, there is again no link between success at wagering and any enhanced attractiveness between the punter and the woman. After the announcement of the award there is no standard kiss between the winner and a close partner prior to accepting an award. Instead, the response is simply one of excitement and pleasure on both their parts. She is clapping, and he is beaming. The depiction is simply one of happiness at the win.

Although the majority of those in the audience are clapping and appear pleased at his success, there are those in the audience who are apparently not so happy at the result. There is no change to his physical appearance from the initial image of the punter on a couch to his appearance at the imagined awards ceremony. His hair remains long and slightly unkempt and he is not depicted as a traditionally handsome male exuding sex appeal. Nor is there any indication in the punter's demeanor after the win that he considers that he is more attractive.

Of even more significance is the presentation of the fictitious award ceremony. It is more than just 'fantastical', containing 'unrealistic elements' as the Panel indicated. There are clear indications that the ceremony is a caricature. The speech of thanks of the punter – 'you know who you are' - is a parody of speeches on such occasions. Several other elements contribute to this impression. The host's kiss on the chest of the punter, not his cheek, or a handshake, is one. Most significantly is the attire of the punter. The suggestion in the initial stage of the ceremony of elegant evening dress is undone when he appears on stage. His football shorts and thongs bring him into ridicule, exposing the earlier sartorial image.

The substantial flaw in the Panel's decision is that it failed to give sufficient weight to these elements in its findings.

Finally, it is appropriate to give some weight to the words at the end of the clip, namely, the warning 'You win some. You lose more' and the reference to a gambling online support service.

## **Conclusion**

Accordingly, I recommend that the Panel reconsider the decision.

## PANEL DETERMINATION ON REVIEW

The Ad Standards Community Panel (Panel) noted the advertiser's request for review of its decision and considered its submission and the findings of the Independent Reviewer. The Panel noted that the Independent Reviewer considered that there were substantial flaws in the Panel's determination. Specifically, the Independent Reviewer considered that it did not give sufficient weight to the following elements:

- There is nothing to suggest a close relationship between the male and the female, and the Panel did not sufficiently address why her presence, and happiness at the win, would suggest enhanced attractiveness
- There are those in the audience that aren't happy the man has won
- The physical appearance of the man (other than his clothing) hadn't changed
- The satirical nature of the advertisement, with clearly factitious elements
- The warning at the end.

The Panel noted that it needed to reconsider the case under the AANA Wagering Advertising and Marketing Communication Code (Wagering Code). The Panel noted that the Independent Reviewer had confirmed the Panel's determinations under Sections 2.5 and 2.8 of the Wagering Code, and there was no need for the Panel to reconsider the determination under these sections.

### **2.7 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**

The Panel considered the Independent Reviewer's comments that the Panel did not give enough consideration to the fact that there is nothing in the advertisement to suggest a close relationship between the male and the female, and that there was nothing in her presence that would suggest enhanced attractiveness. The Panel considered that this scenario has been presented as a glimpse into what the main character is experiencing as a result of the win. The Panel considered that the inclusion of a woman clearly celebrating the main character's change in status due to the win is an indication that the man feels more attractive due to the win. The Panel considered that there is a focus on the woman celebrating in the advertisement, even when he is on stage, and this is an indication that the man's experience of having 'finally made it' includes the admiration of the woman. However, the Panel noted that while it is not the woman's presence alone that implies a link between wagering and enhanced attractiveness, her inclusion adds to the overall theme of the advertisement.

The Panel then noted the Independent Reviewer's comments that the Panel had not given sufficient consideration to the fact there are some in the audience that weren't happy the man has won. The Panel considered that the depiction of others in the audience not being happy about the man's win was an indication that they are jealous



of the main character's win, and the celebration of it. The Panel considered that this is offering a comparison between the winner and the non-winners and showing that the character who has won is or feels more celebrated and admired because of his win. The Panel considered that the inclusion of people not happy with his win did not take away from the overall impression that there was a link between the man's wagering and enhanced attractiveness.

The Panel considered the Independent Reviewer's comments that it had not given sufficient consideration to the man's physical characteristics not changing before and after the win. The Panel considered that there are many different types of characteristics that people find attractive, and the man's physical features do not have to change in order for him to be or feel more attractive. The Panel noted that the man's dress, appearance and demeanour do change between the scene on the couch and the fantasy scenario, as he is shown to be dressed in formal attire and his hair has been pulled back from his face in a neater and more formal style. The Panel noted the section of the Practice Note which states, "portraying the transformation of characters' appearance after wagering can create an implication that wagering could result in enhanced attractiveness and an improvement in self-image". The Panel considered that the change of appearance of the man was an indication that his self-image had improved after wagering.

The Panel first considered the Independent Reviewer's point that the Panel did not give sufficient weight to the satirical nature of the advertisement with clearly factitious elements. The Panel noted that the advertisement was a fantasy, indicated by the wavy lines and elements such as the main character wearing shorts with his formal attire. However, the Panel considered that the voice-over introduces the clip by saying that winning the bet "feels like you've finally made it", and this statement is indicating a direct parallel between winning a bet and the experience of and admiration associated with winning an award. The Panel considered that the fact that the situation presented is an extended simile highlights the impact the win has had on the main characters self-image and self-worth.

Finally, the Panel noted the Independent Reviewer's finding that the Panel had not given sufficient weight to the warning at the end of the clip. The Panel noted that most members of the community would understand that this is a mandatory message that must be included in every television gambling advertisement, and as such cannot be relied upon by an advertiser to mitigate any messaging within the content of the advertisement itself under the Code. The Panel noted that the warning at the end of this advertisement did not contain any messaging around the fact that wagering will not make you more attractive or improve your self-image, and as such was not relevant to whether or not the advertisement was in breach of this section of the Code.

Overall, the Panel considered that the depiction of the man feeling as though he has 'finally made it' is portrayed through his fantasy of having transformed in appearance and been celebrated in a manner similar to a celebrity winning an award. The Panel

considered that this depiction was a strong indication that the main character's self-worth has improved as a result of wagering and this is in turn an indication of enhanced attractiveness. The Panel determined that this advertisement did imply a link between wagering and enhanced attractiveness.

## **2.7 Conclusion**

The Panel determined that the advertisement did state or imply a link between wagering and sexual success or enhanced attractiveness and determined that the advertisement did breach Section 2.6 of the Wagering Code.

## **Conclusion**

On reconsideration, the Panel confirmed its original determination that the advertisement was in breach of Section 2.7 of the Wagering Code and upheld the complaints.