



**Ad Standards** Community Panel  
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**AdStandards.com.au**

Ad Standards Limited  
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## Case Report

<b>1. Case Number :</b>	<b>0093-21</b>
<b>2. Advertiser :</b>	<b>Tom Waterhouse</b>
<b>3. Product :</b>	<b>Gambling</b>
<b>4. Type of Advertisement/Media :</b>	<b>Internet - Social - Facebook</b>
<b>5. Date of Determination</b>	<b>28-Apr-2021</b>
<b>6. DETERMINATION :</b>	<b>Dismissed</b>

### ISSUES RAISED

AANA Wagering Code\2.1 Directed to Minors  
AANA Code of Ethics\2.2 Exploitative or Degrading  
AANA Code of Ethics\2.2 Exploitative or Degrading  
AANA Code of Ethics\2.4 Sex/sexuality/nudity

### DESCRIPTION OF ADVERTISEMENT

This Facebook advertisement features Tom Waterhouse speaking to camera in a manner similar to known Ubersats advertisements.

### THE COMPLAINT

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

*When seeing why the ad was targeted to me FB disclosed targeting for Australians 13 years and older. It is disgusting that they're targeting gambling ads at 13yo children. FB ad targeting breakdown provided in screenshot.*

### THE ADVERTISER'S RESPONSE

The advertiser provided a response to this case however requested that the response remain confidential.



## **THE DETERMINATION**

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

The Panel noted the complainant's concern that the advertisement is targeted towards children.

The advertiser provided a response to this case however requested that the response remain confidential.

### **The Wagering Code**

The Panel considered the advertiser's assertion that the Wagering Code does not apply to the advertisement as the advertiser is not a "Licensed Operator" as defined in the Wagering Code.

The Panel noted that a Licensed Operator is defined as "a person or company licensed in a State or Territory of Australia to provide Wagering Products or Services to customers in Australia".

The Panel noted that a Wagering Product or Service is defined as "product or service, provided by a Licensed Operator, which offers betting on horse races, harness races, greyhound races, sporting events, novelty events or other contingencies (or a series of races, events or contingencies); but does not include gaming, such as casino games or electronic gaming machines, keno, lotto and lottery products or trade promotions. For the purposes of this code, Wagering Product or Service includes betting on fantasy sport teams, odds compilation and tipping services offered or provided by a Licensed Operator".

The Panel noted that that Tom Waterhouse provides tipping/odds compilation services, however is not a licensed operator for betting or wagering services.

The Panel further noted the Practice Note to the Wagering Code which provides advice as to what is excluded from the Wagering Code:

"Services ancillary to wagering such as odds compilation or tipping services provided by third parties who are not licensed operators are also excluded".

The Panel noted however that the Tom Waterhouse app being advertised does have a function for users to place a bet, serving as an intermediary for users to place a bet with a third party.

The Panel noted that the material in question was not produced by a Licensed Operator as defined in the Wagering Code, however considered the intent of the Code as stated in the Practice Note:



*“For the purposes of the Code, the term “wagering activities” refers to the express or implied portrayal of placing a wager (bet) on an uncertain outcome using a Wagering Product or Service. The depiction of “wagering activities” may also include the express or implied portrayal of wagering–related ancillary activities used in combination with, a Wagering Product or Service, such as checking odds or discussing wagering tips in connection with placing a wager or bet”.*

The Panel noted that the substantive provisions of the Wagering Code refer to ‘wagering’ and ‘wagering activities’ as a matter within the purview of the Wagering Code and also considered the objectives of the Wagering Code which include ‘to ensure that advertisers and marketers develop and maintain a high sense of social responsibility in advertising and marketing wagering products in Australia’.

The Panel considered that the absence of a reference to a service such as the one provided by Tom Waterhouse in the definitions section of the Wagering Code does not render its operative provisions ineffective. A broad interpretation of the definition of ‘wagering activities’ to include a form of wagering using the Tom Waterhouse product as an intermediary would be consistent both with the Practice Note and the stated objectives of the Wagering Code. The Panel therefore considered that the provisions of the Wagering Code do apply.

**Wagering Code Section 2.1 - Advertising or Marketing Communication for a Wagering Product or Service must not, having regard to the theme, visuals and language used, be directed primarily to Minors.**

The Panel noted the complainant’s concern that the advertisement was directed to minors based on the targeting information accompanying the advertisement.

The Panel noted the advertiser’s response regarding this matter, that when creating an advertisement through an app on Facebook there is no option to target the advertisement towards a particular demographic, and therefore the targeting data shows that the advertisement is directed towards people aged 13 years and over – being the age restriction for general users.

The Panel considered that this meant that the advertisement was targeted broadly to all Facebook users.

The Panel noted that the provisions of the Code require that the advertisement must not be directed to minors having regard to the themes, visuals and language used. The Panel noted that the placement of the advertisement itself, as opposed to the content of the advertisement, was not within the provisions of the Code.

The Panel then considered whether the themes, visuals and language of the advertisement were directed to minors.



The Panel noted that the theme of the advertisement is to promote an app that provides tipping, odds compilation and wagering services and considered that such an app is unlikely to be of appeal to children. The Panel noted that the advertisement shows a group of people on a boat, and considered that the imagery is not bright or likely to attract the attention of children. The Panel noted that Tom Waterhouse is the only speaker in the advertisement, and considered that his tone and delivery is not child-like or likely to be considered to be directed to children.

The Panel considered that the advertisement has no theme, visuals or language that would be attractive to or directed to minors and considered that the advertisement was not targeting children and was not directed primarily to minors. The Panel considered that the advertisement was clearly directed at an adult audience.

### **Wagering Code Section 2.1 conclusion**

The Panel determined that the advertisement did not breach Section 2.1 of the Wagering Code.

### **The AANA Code of Ethics**

**Section 2.2: Advertising or marketing communications should not employ sexual appeal in a manner which is exploitative or degrading of any individual or group of people.**

The Panel noted the AANA Practice Note which provides guidance on the meaning of the terms exploitative and degrading:

Exploitative - (a) taking advantage of the sexual appeal of a person, or group of people, by depicting them as objects or commodities; or (b) focussing on their body parts where this bears no direct relevance to the product or service being advertised. Degrading – lowering in character or quality a person or group of people.

### **Does the advertisement use sexual appeal?**

The Panel noted the advertisement depicted several women in swimwear and considered that the image did contain sexual appeal.

### **Does the advertisement use sexual appeal in a manner that is exploitative?**

The minority of the Panel considered that the women are depicted as props in the advertisement, there to promote the man's playboy image. The minority considered that the women in the advertisement do not speak or have an active role, and considered that this dehumanised the women and depicted them as doll-like sexual objects to be used by men. The minority of the Panel considered that the cumulative effect of the advertisement amounted to a depiction which reduces the women to objects or commodities.



The majority of the Panel noted that the advertisement featured seven women on a boat with a man. The majority considered that the clear focus of the advertisement is on the man speaking and promoting the app product, and the advertisement does not present the women as objects or commodities. The majority noted that some members of the community may find the use of female models in an advertisement in which they do not have an active role to be exploitative however the majority of the Panel considered that this use of female models or actors is not itself a breach of the Code.

The Panel considered that the women's bodies are not the focus of the advertisement and that there is no particular focus on the women's body parts in the advertisement, and that this is not a breach of part (b) of the definition of exploitative.

Overall the Panel considered that the advertisement did not employ sexual appeal in a manner which is exploitative of the women.

#### **Does the advertisement use sexual appeal in a manner that is degrading?**

The minority of the Panel considered that the implication that the women are props, there to serve the man's ego, was lowering them in character and quality and was degrading of the women.

The majority considered that the overall manner in which the women are depicted in the advertisement does not degrade or lower the quality of the women in the advertisement, or women in general.

#### **Section 2.2 conclusion**

Finding that the advertisement did not employ sexual appeal in a manner which is exploitative or degrading of an individual or group of people, the Panel determined that the advertisement did not breach Section 2.2 of the Code.

#### **Section 2.4: Advertising or Marketing Communications shall treat sex, sexuality and nudity with sensitivity to the relevant audience.**

The Panel noted the Practice Note for the Code states:

*"Images which are not permitted are those which are highly sexually suggestive and inappropriate for the relevant audience. Explicit sexual depictions in marcomms, particularly where the depiction is not relevant to the product or service being advertised, are generally objectionable to the community and will offend Prevailing Community Standards."*

#### **Does the advertisement contain sex?**



The Panel considered whether the advertisement contained sex. The Panel noted the definition of sex in the Practice Note is “sexual intercourse; person or persons engaged in sexually stimulating behaviour”.

The Panel considered that the women and man were not touching or interacting and there was no indication that they were engaging in sexual intercourse. The Panel considered that the advertisement did not contain sex.

### **Does the advertisement contain sexuality?**

The Panel noted the definition of sexuality in the Practice Note is “the capacity to experience and express sexual desire; the recognition or emphasis of sexual matters”.

The Panel noted that the women were wearing swimwear on a boat, and considered that while the man was fully dressed, there was no sexual suggestion to the advertisement. The Panel considered that the advertisement did not contain sexuality.

### **Does the advertisement contain nudity?**

The Panel noted that the definition of nudity in the Practice Note is “the depiction of a person without clothing or covering; partial or suggested nudity may also be considered nudity”.

The Panel noted that the women are wearing swimwear and considered that some members of the community may consider the depiction of a person in swimwear to constitute partial nudity.

### **Is the issue of nudity treated with sensitivity to the relevant audience?**

The Panel noted that the definition of sensitivity in the Practice Note is “understanding and awareness to the needs and emotions of others”.

The Panel considered that the requirement to consider whether sexual suggestion is ‘sensitive to the relevant audience’ requires them to consider who the relevant audience is and to have an understanding of how they might react to or feel about the advertisement.

The Panel noted that this advertisement is a sponsored post on Facebook and considered that the audience would be broad but predominately adult.

The Panel considered that the poses of the women were relaxed and not sexually suggestive and that the overall advertisement was not highly sexually suggestive. The Panel considered that the depiction of women in swimwear was not inappropriate for an advertisement set on a boat.



The Panel considered that the mild level of nudity in the advertisement was appropriate for the relevant broad audience.

#### **Section 2.4 Conclusion**

The Panel determined the advertisement did treat sex, sexuality and nudity with sensitivity to the relevant broad audience and did not breach Section 2.4 of the Code.

#### **Conclusion**

Finding that the advertisement did not breach any other section of the Code, the Panel dismissed the complaint.