



Ad Standards Community Panel
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Advertising Standards Bureau Limited
ACN 084 452 666

Case Report

1	Case Number	0159/18
2	Advertiser	NEDS
3	Product	Gaming
4	Type of Advertisement / media	TV - Free to air
5	Date of Determination	11/04/2018
6	DETERMINATION	Dismissed

ISSUES RAISED

- 2.1 - Discrimination or Vilification Gender
- 2.1 - Discrimination or Vilification Occupation
- 2.8 - Excess participation Condone or imply excess participation

DESCRIPTION OF THE ADVERTISEMENT

This television advertisement depicts a scenario whereby all the construction workers/tradesmen on site are sitting around having a morning tea break and are on their mobile phones. One man walks a woman, presumably the homeowner, through the site to explain progress.

THE COMPLAINT

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

It encourages dishonest behaviour. Ie. When someone is paying you to do a job it's not only acceptable to not do what you are obliged to, but that it is somehow cool or encouraged. The woman is seen as the antagonist and the fool, where she is in actual fact a victim of financial deception and being taken advantage of.

It's sexist and offensive.

To portray gambling during work as being acceptable is pretty disgusting and even the tag line is something similar to 'let's bet'.



The fact that Australia has more gamblers per capita than any other country should be a shame. Not a badge of honour.

It beggars belief that this ad was ever authorized.

This ad is encouraging workers, especially tradesmen, to mislead their employers/managers of delays to job progress/completion in order to have time to gamble. This ad promotes a culture of 'slacking off' and runs the risk of costing businesses thousands of dollars in wasted wages as well as possible job loss for many vulnerable people addicted to gambling. It also runs during hours that teenagers (who are soon to enter the workforce) are watching TV, and are given false view of work ethics employers will accept in their employees.

Sexist attitude to a woman

This ad was banned last year as it encourages gambling at work, so not sure why it is still being shown. I have seen it multiple times since the ban

Females being treated poorly, tradies portrayed as lazy gamblers and liars. Promotion of gambling during a time when kids could be watching 6:15 pm

THE ADVERTISER'S RESPONSE

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

Issues Raised to Date:

This is a revised version of an advertisement that was originally considered by the ASB under case number 0459-17.

In accordance with the email received from Advertising Standards Bureau on 2 November, 2017, Neds were permitted to screen the amended version of the advertisement after making the nominated changes as stated in Neds' email to the ASB on 1 November, 2017.

Section 2.1 of the AANA Code of Ethics

2.1 Discrimination or Vilification of Gender

The advertisement depicts a scenario whereby all the construction workers/tradesmen on site are sitting around having a 'smoko' break waiting for other work to be finished on site by other tradesmen.

The site supervisor is depicted as being genuinely concerned and embarrassed at the



lack of progress on the site when the female client shows up on site.

The supervisor does not fob the client off or discard her concerns, but rather, he hurries off and begins walking around the site, asking the various tradesmen asking why things have not been done.

The depiction of the client as a female is incidental and there is nothing in the advertisement that could be construed as being a situation where the site foreman or the tradesmen are taking advantage of, or vilifying the female client on account of her gender.

Section 2.1 of the AANA Code of Ethics

2.1 Discrimination or Vilification of Occupation

The advertisement is clearly intended to be humorous and light-hearted, whereby all the construction workers/tradesmen on site are sitting around having a 'smoko' break during their downtime, while they are waiting for other work to be finished on site by other tradesmen (a common situation on a building site).

There is an overlay and the start of the advertisement stating "A Typical Building Site 10am Morning Tea Break" to make clear that that workers are on a designated meal break.

Accordingly, the advertisement does not depict the tradesmen as being lazy, neglecting their work duties or in any other way which could be construed as a discrimination or vilification of their occupation

Section 2.8 of AANA Wagering Advertising & Marketing Communication Code

Must not portray, condone or encourage excess participation in wagering activities

Advertisers Response:

The advertisement depicts a scenario whereby all the construction workers/tradesman on site are sitting around having a 'smoko' break,.

The tradesmen are depicted as choosing to have a bet on their phone during this downtime/smoko break and they are not depicted as gambling on their phones in a way which could be construed as taking priority over, or neglecting their work responsibilities.

The advertisement is intended to, and in fact does depict the tradesman in a humorous way, taking advantage of their downtime on site, to entertain themselves and have a



bet on their phone.

The sole intent and unequivocal message of the advertisement is to suggest that consumers can take advantage of any down time, quiet time or wasted time they may otherwise have, to entertain themselves on their phone, which may in this instance, include having a bet.

There is an overlay and the start of the advertisement stating “A Typical Building Site 10am Morning Tea Break” and the foreman states at the end of the advertisement “OK boys...back to work” to make clear that that workers are on a designated meal break while they are betting on their phones.

Therefore, it is submitted that the advertisement does not portray, condone or encourage excess participation in wagering activities.

THE DETERMINATION

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

The Panel noted the complainant’s concerns that the advertisement is denigrating to women, encourages deceitful behaviour, portrays an unhealthy level of gambling and depicts tradesmen unable to work because it is more important to gamble.

The Panel noted it had considered a previous version of this advertisement in case 0459/17 where the Panel upheld complaints about the advertisement.

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

The Panel considered whether the advertisement complied with Section 2.1 of the Code which requires that ‘advertisements shall not portray 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.’

The Panel noted the advertisement is part of a series and that this particular advertisement “Tradesmen” features a woman approaching the foreman regarding the progress of the home she is having built. The Foreman speaks to the workers on the building site and they each explain the reasons why they cannot progress any work. The examples include:



not being able to put the roof on until the insulation is finished,
can't do anything until the wiring is done,
waiting for the installation of the solar panels
can't install the solar panels until the roof is on.

The Panel noted the complainants' concerns that the woman is seen to be dismissed and is not respected in her query regarding the progress of the construction and that this is offensive to women.

The Panel noted the Practice Note to Section 2.1 of the Code which provides the following definitions:

"Discrimination – unfair or less favourable treatment
Vilification – humiliates, intimidates, incites hatred, contempt or ridicule".

The Panel noted that the woman appears unimpressed by the information she is receiving from the foreman and that as she hears the excuses she remains unhappy about the reasons. The Panel noted that the woman walks away at the end of the advertisement seemingly in disgust about what she has been told.

The Panel noted that the woman does not appear to believe the reasons she has been provided and her departure is in response to the realization that there would be no work done at that time. The Panel considered that the way the workers and in particular the foreman treat her query is not a direct response to her being a woman but rather a list of related circular excuses because the men would rather be doing something else.

The Panel considered that whilst the woman's treatment may be disrespectful, the woman is not portrayed as being humiliated or intimidated and noted that she walks away of her own accord in a frustrated manner. The Panel considered that the advertisement did not portray or depict material in a way which discriminates against or vilifies a person on account of gender and did not breach section 2.1 of the Code.

The Panel 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 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.

The Panel considered whether this is a depiction of wagering 'activities' and noted



that there is no definition of a wagering ‘activity.’ The Panel considered that the promotion of a ‘brand’ along with an image of people using a mobile device is the commencement of a wagering activity and the inclusion of the phrase “it’s time to bet” was understood to be a wagering related product and can be reasonably interpreted as a wagering activity in the context of an advertisement for a wagering brand/product.

The Panel noted however the decision of the Independent Reviewer in Tabcorp (0447/16) where it was decided that a depiction of people “spending their time wagering and watching racing on their mobile devices’ presumably showing the Tabcorp ‘app’, can reasonably be interpreted as being engaged in a wagering activity in the context of an advertisement for a wagering product. To ‘wager’ in the context of ‘wagering activity’ is ‘2. The act of betting’ (Macquarie Concise Dictionary (5th edn, 2009) 1416). Tabcorp denied that there was any ‘direct portrayal of gambling or wagering’. That is the case. Nonetheless, the depiction is implied.” The Panel considered that similarly in the current advertisement the promotion of a ‘Betting app’ can be reasonably interpreted as a depiction of wagering activity in the context of an advertisement for a wagering product.

The Panel then considered whether the advertisement portrayed ‘excessive’ participation in wagering activities.

The Panel 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 Panel considered that this did not restrict the application of Section 2.8.

The Panel noted the advertiser’s response that the tradesmen are depicted as choosing to have a bet on their phone during this downtime/smoko break and they are not depicted as gambling on their phones in a way which could be construed as taking priority over, or neglecting their work responsibilities.

The Panel noted it had considered a previous version of this advertisement in case 0459/17 in which

“The Board noted that it is impossible to know whether or not the workers are on a



break and that the very first scene of the advertisement shows all the workers on their phones outside the site and then inside the building site as well. The Board considered that the overall impression was that work on the building site had ceased and all workers were more preoccupied with gambling rather than doing their paid job."

The Panel considered that the alterations to the advertisement, beginning with the text overlay 'A typical building site, 10am morning tea break' and ends with the foreman saying 'OK boys, back to work', were a clear indication that the workers are on a break, and that the depictions of using their mobile phones for wagering activities were being undertaken during this specified work break and that the activities ceased at the conclusion of the morning tea break. The Panel considered that such action within a defined work break was not a portrayal of excessive wagering.

The Panel noted there is a high level of community concern with regards to excessive gambling and considered that the message of the modified advertisement is not necessarily contrary to this concern as it does not encourage or condone excess participation in wagering activities.

The Panel considered that the modified advertisement does not portray excessive participation in wagering activities and determined that this advertisement does not breach Section 2.8 of the Wagering Code.

Finding that the modified advertisement did not breach the Wagering Code or the AANA Code of Ethics on other grounds, the Panel dismissed the complaints.

