



**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>0200-22</b>
<b>2. Advertiser :</b>	<b>PointsBet Australia Pty Limited</b>
<b>3. Product :</b>	<b>Gambling</b>
<b>4. Type of Advertisement/Media :</b>	<b>TV - Free to Air</b>
<b>5. Date of Determination</b>	<b>14-Sep-2022</b>
<b>6. DETERMINATION :</b>	<b>Dismissed</b>

### ISSUES RAISED

AANA Wagering Code\2.1 Directed to Minors  
AANA Code of Ethics\2.1 Discrimination or Vilification  
AANA Code of Ethics\2.5 Language

### DESCRIPTION OF ADVERTISEMENT

There are two versions of this television advertisement which feature former basketball player Shaquille O'Neal (Shaq) and Australian comedy group the Inspired Unemployed.

In the first version the men are sitting in a front yard. Shaq asks, "How about this filly in the fifth fellas, put a \$50 on it?" The men respond:

"Yeah Nah, I'd giver her the old [whistle] ya know?"

"How ya going, how ya been?"

"Nah Yeah Nah, Yeah Yeah"

Shaq asks, "Is that a yes or no?"

The men continue:

"Nah yep. Greys in the wet hey. Having a trot you know? [whistle] Good sort. [whistle] Came to play. You know?"

"Up the guts. Good size".

"Where you going? How ya been?"

Shaq then says, "You Aussies sure are built different" and continues to describe the benefits of the product.

At the end of the ad Shaq says, "You know what they call me mate? Shaquadile Dundee".



In the second version of the advertisement the men are in a bar. Shaq makes comments about how AFL works in comparison to basketball terms and the other men correct him. At the end of the ad Shaq shouts at the TV, "Oi quarterback, get a dog up ya!" And the other men wince.

### **THE COMPLAINT**

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

*Youth especially underprivileged youth role model and sports role model Shaquille O'Neill promoting gambling app. If this form of advertising has to occur, surely it should be restricted to later time slots to minimise potential harm to youth that look up to this basketball star.*

*I accept that this is a misguided attempt at humor, however, I think that it is demeaning to young Australians and Australia and Australians in general and is crassly offensive.*

*The Australian's depicted are speaking in some stupid, supposed English, which made them sound like morons. Their depiction of typical Australians is an insult making us all look like jibbering idiots.*

*It's derogatory to Australians. We are pigeonholed as bogan idiots who can't speak properly. Being a proud Australian I find it extremely offensive. It is most definitely not accurate. In particular the one where they whistle rather than say words, we don't speak like that! If it is being aired overseas the rest of the world must think we are idiots! It is discriminatory and not acceptable, it would not be condoned for any other race or culture, why would we allow Australians to be falsely portrayed like this?*

*Inappropriate language. Slag term should be after kids are in bed. Especially this one.*

*This is offensive. Though it can mean to have a drink, usually alcohol but it can also mean "go fuck yourself" which was what I took it as.*

*The language and comment of "Get a Dog up ya" is completely disgusting and totally inappropriate. Even the actors in the ad allude to the distaste by their comment and putting hands over his ears.*

*Near the end of the ad Shaquille O'Neal shouts out "quarterback get a dog up yer". This refers to having sex with an animal and is very offensive.*

### **THE ADVERTISER'S RESPONSE**

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



*We refer to the letters issued by Ad Standards to PointsBet Australia Pty Limited (“PointsBet”, “we”, “us” or “our”) on 30 August 2022, 2 September 2022, 7 September 2022, and 12 September 2022 respectively concerning a series of our television commercials featuring the prominent American sports star Shaquille O’Neal (“Shaq”) and the social media influencer group ‘The Inspired Unemployed’ playing a variety of their characters (“TIU”).*

*The letters detail a series of complaints made by members of the public in relation to those television commercials. We thank you for bringing the complaints to our attention. For the reasons set out below, we are strongly of the view that the television commercials are wholly compliant with all applicable codes and legislative or regulatory regimes. Accordingly, we respectfully submit that all of the complaints be dismissed.*

*That said, PointsBet has thoroughly considered the complaints. We take the views expressed by the community members seriously and will consider them including potential implications (if any) for future advertising.*

#### *General commentary about the campaign*

*Australia, people, and place is loved throughout the world to be uniquely different. This uniqueness is a positive trait that extends to our vernacular, places, animals and more. It is a place like no other with its own peculiar take on the English language and sport. In reality, it is common that persons not familiar with Australiana struggle to understand our colloquialisms, mannerisms and the like. The Ads are intended to be a comical and playful take on these real to life scenarios. The Ads do not and are not intended (in any way) to be denigrating towards Australians, nor do they depict or encourage discrimination or vilification towards Australians because of the way they speak or act. Further, the uniquely Australian phrases used by the protagonists throughout the Ads are uttered amusingly and not delivered in a way that is demeaning, threatening or offensive. Additionally, the Ads draw attention to some of the world-renowned traits of Australia (e.g., our vernacular and local sports) in a fun and positive way to emphasise that PointsBet too is “built different”.*

#### *Response to complaints*

*There are several themes to the complaints. These are that one of or both of the Ads are in some way:*

- discriminatory, demeaning, or derogatory in its treatment of Australians;*
- discriminatory, demeaning, or derogatory towards young Australian males in particular;*
- offensive or insulting by depicting Australians as “idiots”, “morons”, “as having low intelligence”, “being from an inferior race”;*
- disrespectful towards Australians and Australian culture;*
- a depiction of Australians as being a people that “suffer from touretts [syndrome]”;*
- placed to target or is otherwise directed at encouraging minors to gamble; and*
- in relation to the Sports Bar Ad specifically, uses “inappropriate”, “crass” or otherwise offensive language.*



*PointsBet takes its obligations under both the AANA Code of Ethics (the “Code of Ethics”) and the AANA Wagering Advertising Code (the “Wagering Code”) very seriously and firmly rejects any assertion that the Ads breach either code. Below, we deal directly with each of the matters put forward in the complaints which have been identified by Ad Standards as potentially giving rise to issues under the Code of Ethics and the Wagering Code.*

#### *Code of Ethics, section 2.1*

*Ad Standards considers that the complaints about the Front Yard Ad raise issues related to discrimination or vilification under section 2.1 of the Code of Ethics. This section provides is as follows:*

*“Advertising shall 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 orientation, religion, disability, mental illness or political belief.”*

*PointsBet does not condone any form of discrimination or vilification including (as is relevant in the present matter) on account of nationality or age. Accordingly, PointsBet firmly refutes any and all assertions that the Front Yard Ad in any way discriminates or vilifies any person or section of the community.*

*In particular, the complaints allege that the Front Yard Ad discriminates against, demeans, or otherwise vilifies either (i) all Australians, or (ii) a subset of young male Australians. PointsBet fundamentally disagrees and submits that a reasonable person could not consider that to be the effect of the execution, and it was certainly not the intention. Rather, the Front Yard Ad is a subtle and playful depiction of the difficulty that persons not familiar with Australiana (in this case an American sports star) have in interpreting common Australian colloquialisms and mannerisms when used in ordinary conversation.*

#### *Nationality*

*The terms used by the TIU protagonists in the Front Yard Ad, such as “yeah nah” and “greys in the wet” are colloquialisms uniquely and commonly used in Australian parlance. Specifically:*

- “yeah nah” is a term used by many Australians as a respectful way to indicate they have heard a statement and/or have a level of support for the proposition put forward by another person while ultimately disagreeing with it.*
- “greys in the wet” is a term used by aficionados of thoroughbred horse racing in Australia to refer to the commonly espoused (but ultimately immeasurable) theory that grey coloured horses perform better on wet racetracks than horses of other colours.*

*In this case, Shaq asks for an assessment of “the filly in the fifth[‘s]” chances of winning the race. TIU respond with words such as “yeah nah” and “greys in the wet”*



*as a way of implicitly indicating that given the wet racetrack, the grey horse running in the race is the preferred selection to win. Both colloquialisms are used in an exaggerated and humorous manner to demonstrate the unique take on the English language that many Australians have versus English speaking persons from other countries such as America. This is emphasised by the look of confusion on Shaq's face as he tries to interpret whether or not TIU support the proposition that "the filly in the fifth" is a good bet. Shaq does not make any negative, offensive, or disparaging comment or gestures about the way TIU are speaking. In the alternative, he slowly shakes his head indicating his inability to interpret the responses and positively reinforces the differences of Australians by comparing them to PointsBet, which is itself an Australian company "built different".*

*Clearly, that Ads do not create a negative impression about Australians (or any subset of Australians) and the exaggerated accent and colloquialisms positively speak to the uniqueness of Australia and Australian culture playfully and with humour. It is in this context that PointsBet asks the Community Panel to make a determination that there is no discrimination or vilification on the basis of nationality in the Front Yard Ad.*

*Age*

*Respectfully, nothing (whether depicted, spoken or implied) in the Front Yard Ad can reasonably be taken as discrimination or vilification on account of age. As is established under the Code of Ethics, for content to be discriminatory on account of age it must either (a) treat people of that age unfairly or less favourably because of their age, or (b) humiliate, intimidate, incite hatred or contempt, or ridicule against people of that age. In this case, neither the age of Shaq or TIU is expressly or implicitly referred to in the Front Yard Ad. The tone is playful and there is no treatment (depicted, encouraged, or implied) towards any of the protagonists which is even remotely relevant to their age. It follows then that PointsBet respectfully submits there is no basis for the complaints in relation to this aspect of the Code of Ethics.*

*Code of Ethics, section 2.5*

*Ad Standards considers that the complaints concerning the Sports Bar Ad raise potential issues related to use of inappropriate language under section 2.5 of the Code of Ethics. This section provides is as follows:*

*"Advertising shall only use language which is appropriate in the circumstances (including appropriate for the relevant audience and medium). Strong or obscene language shall be avoided."*

*The complaints in this regard concentrate on use of the colloquial term "get a dog up ya" used by Shaq at the end of the Sports Bar Ad. It is well established that innocuous phrases which are commonly used in Australian vernacular are permitted provided they are used in a manner consistent with their colloquial usage. It is also established that mere inferences or associations with strong or obscene language will not be a breach.*



*The colloquial term “get a dog up ya” has a multifaceted meaning depending on the context in which it is used. One common use of the term by many Australians is as means of encouraging a person to perform better.*

*In the Sports Bar Ad, it is clear that Shaq is new to the game of Australian rules football. As all protagonists are seated watching a game, Shaq asks TIU a series of questions related to the rules for scoring and becomes emboldened by the comment that he has “got it”. A reference to the fact that he is developing an understanding of how scoring works in Australian rules football. It is in this context that Shaq, in a manner and tone that is neither demeaning nor aggressive, says in an elevated voice “oi quarterback, get a dog up ya”. That is, by using the term Shaq is encouraging the player he believes to be the quarterback to play better. The protagonists around Shaq look on bemused, not because the term is used out of context or otherwise because it is offensive or obscene, but rather because of Shaq’s erroneous reference to a player on the field as a “quarterback”. The term “quarterback” is derived from American football and refers to the player charged with controlling a teams play. There is no quarterback in Australian rules football. For the avoidance of doubt, the term “get a dog up ya” is commonly used in Australian vernacular as a means of cheekily encouraging a person playing sport to move on from a mistake, get back in the game and perform at their peak.*

*For the reasons set out above PointsBet submits that the Sports Bar Ad does not include any strong or obscene language that, in context, is inappropriate.*

*Wagering Code, section 2.1*

*Ad Standards considers that the complaints concerning the Sports Bar Ad could raise issues related to wagering advertising that is primarily directed to minors in contravention with section 2.1 of the Wagering Code. This section provides is as follows:*

*“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.”*

*Having regard to the overall context of our Ads including the placement, themes, visuals, and language used, PointsBet strongly submits that they are not directed primarily (or at all) to minors. Even a passing viewer would recognise that all protagonists are clearly of legal gambling age (18+), and they are portrayed in clearly adult settings. The Ads do not contain any content that is of particular appeal to minors and the protagonists are not personalities that are likely to engage or resonate with children. Further, the messaging and language within the Ads is complex, requiring an adult understanding of certain social scenarios to follow along with the narrative. Finally, the Ads were placed in adult time slots in compliance with applicable laws and codes. On this basis, we submit there is no evidence supporting any determination other than a determination that the Ads are not directed primarily to minors.*



### *General assessment against the Wagering Code*

*In addition to the specific responses to each complaint provided above, PointsBet has assessed the Ads against the Wagering Code more generally. As a result of that review, we remain firmly of the view that the Ads are wholly compliant with the Wagering Code and that the complaints should be dismissed.*

*That said, make the following comments regarding each individual section of the Wagering Code:*

#### *Section 2.1 – Not directed at minors*

*For the reasons discussed above, PointsBet respectfully submits that the Ads are not directed primarily (or at all) to minors.*

#### *Section 2.2 – No depiction of minors*

*The Ads do not feature minors.*

#### *Section 2.3 – No depiction of young people wagering*

*The Ads do not depict persons aged 18-24 years old engaged in wagering activities. Our main protagonist, Shaq, is aged over 49 and each of the TIU protagonists are over 26 or older.*

#### *Section 2.4 – No alcohol*

*The Ads do not portray, condone, or encourage wagering in combination with the consumption of alcohol.*

#### *Section 2.5 – No promise of win*

*Having regard to the overall context of our Ads and the scenarios depicted, it is clear that they do not expressly or impliedly provide any promise of winning outcomes. In fact, to the extent that wagering is actually depicted, it is only the act of using the PointsBet app that is in focus. The Ads merely imply that it is easy, fast, and better to bet with PointsBet.*

#### *Section 2.6 – No relief from difficulty*

*The Ads are light-hearted and humorous. They do not portray, condone, or encourage participation in wagering activities as a means for relieving financial or personal difficulties.*

#### *Section 2.7 – No link with sexual success or attractiveness*

*Having regard to the overall context of the Ads and the scenarios depicted, PointsBet is of a view that they clearly do not state or imply any link between wagering and a person's sexual success or enhanced attractiveness.*

#### *Section 2.8 – No depiction of excessive participation in wagering*

*The Ads do not portray, encourage, or condone excessive participation in wagering activities. In contrast, the act of wagering is merely incidental to the broader storyline of each Ad, and neither Ad could in any substantive way be interpreted by a*





*reasonable person as doing anything other than depicting wagering as a form of adult entertainment.*

*Section 2.9 – No peer pressure*

*The Ads do not portray, condone, or encourage peer pressure to wager, nor do they disparage abstention from wagering activities.*

*General assessment against the Code of Ethics*

*In addition to the specific responses concerning section 2.1 and section 2.5 of the Code of Ethics provided above, PointsBet has assessed the Ads against all remaining sections. As a result of that assessment, we remain firmly of the view that the Ads are wholly compliant with the Code of Ethics and that all complaints should be dismissed.*

*On that basis, we make the following observations as to compliance of the Ads with each individual section of the Code:*

*Section 2.1 – No discrimination or vilification*

*For the reasons explained above, we are firmly of the view that the Ads do not portray or depict material which discriminates against or vilifies any person or section of the community on account of race, ethnicity, nationality, gender, age, sexual orientation, religion, disability, mental illness, or political belief.*

*Section 2.2 – No sexual appeal*

*The Ads do not employ sexual appeal where minors, or people who appear to be minors are used (there are no minors depicted in the Ads). Having regard to the overall context of the Ads and the scenarios depicted, PointsBet submits they do not exploit or degrade any featured character nor do they exploit or degrade any individual or group of people not featured.*

*Section 2.3 – No violence*

*The Ads do not present or portray violence or any violent scene.*

*Section 2.4 – Treatment of sex, sexuality and nudity*

*The Ads do not feature themes or scenarios depicting sex, sexuality or nudity and there is no suggestion or treatment thereof.*

*Section 2.5 – Appropriate language*

*For the reasons described above, and considering the scenarios depicted in the Ads and the interaction between the protagonists, PointsBet is firmly of the view that only language which is appropriate in the overall context of each Ad is used. The Ads do not feature any strong or obscene language. While the Sports Bar Ad features one (1) common colloquialism that has had multiple meanings, the phrase itself is complex, not overtly strong, or obscene and in context of the Ad has a harmless, common meaning.*

*Section 2.6 – Community Standards*





*Having regard to the overall context of the Ads and the scenarios depicted, there is no material contrary to prevailing community standards on health and safety depicted.*

*Section 2.7 – Clearly advertising*

*The Ads are obvious, and clearly recognisable as advertising for the PointsBet brand and our wagering product.*

*Conclusion*

*PointsBet thanks Ad Standards for bringing the complaints to our attention. Our goal is to develop fun and relevant advertisements that promote our brand in a responsible manner having regard to not just the Wagering Code and the Code of Ethics, but also to all our other legislative and regulatory obligations. We are of the view that the Ads are fully compliant. Having considered the complaints and set out our reasoning concerning those complaints above, we respectfully submit that the complaints have no merit and ask that both complaints be dismissed.*

## **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 complainants' concerns that the advertisement:

- Targets children through the use of a youth role model
- Discriminates against Australians
- Discriminates against young men
- Contains inappropriate language.

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.

As per the AANA Wagering Advertising and Marketing Communication Code Practice Note:

*"The Code applies to advertising and marketing communication for wagering products and services provided by licensed operators in Australia."*

**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 that the Practice Note for the Wagering Code states:



*“Whether an advertisement or marketing communication is “directed primarily to minors” is an objective test based on a range of factors. It is a combination of visual techniques and age of characters and actors which will mean the marketing communication is directed primarily to minors. The use of any one factor or technique in the absence of others may not necessarily render the marketing communication “directed primarily to minors”...*

*“An advertisement or marketing communication featuring cartoons or licensed characters, such as super heroes and celebrities, that particularly appeal to minors may breach the Code. Licensed operators should take great care when using cartoon-like images. They may be acceptable if they are adult in nature but licensed operators run the risk of breaching the Code if the cartoon images are appealing to minors.”*

The Community Panel noted that minors were defined in the Wagering Code as those under 18.

The Panel noted that the advertisement features former basketball player Shaquille O'Neal (Shaq) and Australian comedy group the Inspired Unemployed. The Panel noted that Mr O'Neal had not played basketball recently and would be more recognisable to an older audience than those under 18.

The Panel noted that the Inspired Unemployed are two men in their late twenties who are popular on social media including TikTok and Instagram. The Panel considered that their style of humour and the theme of their videos was likely to appeal to young adults, particularly males, and would not be of particular appeal to those under 18.

The Panel considered that the advertisements use of celebrities, and the humour used in the advertisement would be of greatest appeal to adults.

The Panel considered that the ad was not directed primarily towards people under 18.

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

The Panel determined that the advertisement was not directed primarily to minors and did not breach Section 2.1 of the Wagering Code.

**Section 2.1: Advertising shall 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 orientation, religion, disability, mental illness or political belief.**

The Panel noted the AANA Practice Note which provides guidance on the meaning of:

- Discrimination - unfair or less favourable treatment



- Vilification - humiliates, intimidates, incites hatred, contempt or ridicule
- Age - based on a person's actual age (i.e. from the date they were born) and not a person's biological age (i.e. how old they may appear)
- Nationality – people belonging to a particular nation either by birth, origin or naturalisation. This can change over time so, for example, a person born in the United States who becomes a citizen of Australia by marriage may describe their nationality as either/both Australian or/and American

The Panel noted that the younger men in the advertisement are popular online comedians who would be recognisable in the target market of young adult males. The Panel considered that the type of humour in the advertisement was consistent with the material that the group was known for. The Panel considered that, in particular the phrases used in the first version advertisement were deliberately exaggerated for humorous effect, and did not suggest that all young Australian men were stupid or unable to speak intelligibly.

The Panel considered that the advertisement contained self-deprecating humour which would be seen by many to celebrate the uniqueness of Australia. Overall, the Panel considered that the advertisement did not show the Australians receiving unfair or less favourable treatment, nor does it humiliate, intimidate or incite hatred, contempt or ridicule of the Australians depicted or Australians in general.

### **Section 2.1 conclusion**

Finding that the advertisement did not portray material in a way which discriminates against or vilifies a person or section of the community on account of age or gender, the Panel determined that the advertisement did not breach Section 2.1 of the Code.

### **Section 2.5: Advertising shall only use language which is appropriate in the circumstances (including appropriate for the relevant audience and medium). Strong or obscene language shall be avoided.**

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

*“Words and phrases which are innocuous and in widespread and common use in the Australian vernacular are permitted provided they are used in a manner consistent with their colloquial usage, for example with gentle humour, and not used in a demeaning or aggressive manner.”*

The Panel noted that the phrase “get a dog up ya” was used in many different circumstances and did not have one clear meaning.

The Panel noted the complainants' concerns that the phrase means to 'go f\*ck yourself' or is a suggestion of bestiality.



The Panel noted that Urban dictionary provides the below definitions of the phrase:

- an Australian expression derived from "hair of the dog that bit you," "get a dog up ya" is a jovial instruction to take your alcoholic beverage and drink it, similar to cheers.
- An Australian expression which really doesn't mean anything much at all. Often said whilst being drunk and yelled at high volume at the footy.
- piss off
- To go get f\*cked.

The Panel noted the advertiser's response that the phrase was one which is often said to encourage someone to do better.

The Panel considered that the phrase was uncommon and not well understood. The Panel considered that the phrase in the advertisement was not used in an aggressive manner or in a way which suggested that anyone in particular was being insulted.

The Panel considered that this phrase being shouted at a television while watching a sporting match was consistent with its colloquial usage, and was not inappropriate in the circumstances, nor was it strong or obscene language.

### **Section 2.5 conclusion**

The Panel determined that the advertisement did not breach Section 2.5 of the Code.

### **Conclusion**

Finding that the advertisement did not breach any other section of the Codes administered by Ad Standards, the Panel dismissed the complaints.