



Ad Standards Community Panel
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AdStandards.com.au

Ad Standards Limited
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Case Report

1. Case Number :	0211-22
2. Advertiser :	PointsBet Australia Pty Limited
3. Product :	Gambling
4. Type of Advertisement/Media :	TV - On Demand
5. Date of Determination	14-Sep-2022
6. DETERMINATION :	Dismissed

ISSUES RAISED

AANA Code of Ethics\2.1 Discrimination or Vilification

DESCRIPTION OF ADVERTISEMENT

There are two versions of this TV-on-demand advertisement which feature former basketball player Shaquille O'Neal (Shaq) and Australian comedian 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:

It portrays the 'Aussies' as real stupid yobbos. I'm an Aussie too, and don't identify as a yobbos lout like these characters are portrayed. It's offensive to my as an Australian to see my culture down like this.

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 letter issued by Ad Standards to PointsBet Australia Pty Limited ("PointsBet", "we", "us" or "our") on 6 September 2022 concerning an advertisement featured on demand 7Plus featuring the prominent American sports star Shaquille O'Neal ("Shaq") and the social media influencer group 'The Inspired Unemployed' playing a variety of Australian characters ("TIU").

The letters details the complaint made by a member the public in relation to the on-demand advertisement. We thank you for bringing these complaints to our attention. For the reasons set out below, unquestionably believes that the advertisement is wholly compliant with all applicable codes and legislative or regulatory regimes. Accordingly, we respectfully submit that it should be dismissed without any further action.

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

General commentary about the campaign

Australia, people, and place is known 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 Ad is intended to be a comical and playful take on these real to life scenarios. The Ad does not and is not intended (in any way) to be denigrating towards Australians, nor does it 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 Ad 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 PointseBet too is "built different".



Response to complaints

The concerned community member complains about the Ad as follows:

“It portrays the 'Aussies' as real stupid yobbos. I'm an Aussie too, and don't identify as a yobbos lout like these characters are portrayed. It's offensive to me as an Australian to see my culture down like this.”

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 Ad breach either code.

That said, Ad Standards considers that the complaint raises 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.

In particular, the complaint alleges that the Ad portrays Australians as “real stupid yobbos”. 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 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.

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 jilly 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.

General assessment against the Wagering Code

In addition to the specific response to the complaint provided above, PointsBet has assessed the Ad against the Wagering Code more generally. As a result of that review, we remain firmly of the view that the Ad is wholly compliant with the Wagering Code and that the complaint should be dismissed.

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

Section 2.1 – Not directed at minors

Having considered the form, tone and placement of the Ad, PointsBet respectfully submits that the Ad is not directed primarily (or at all) to minors.

Section 2.2 – No depiction of minors

The Ad does not feature minors.

Section 2.3 – No depiction of young people wagering

The Ad does 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 Ad does 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 the Ad and the scenarios depicted, it is clear that it does 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 Ad merely implies that it is easy, fast, and better to bet with PointsBet.



Section 2.6 – No relief from difficulty

The Ad is light-hearted and humorous. It does 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 Ad and the scenario depicted, PointsBet is of a view that it clearly does 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 Ad does not portray, encourage, or condone excessive participation in wagering activities. In contrast, the act of wagering is merely incidental to the broader storyline of the Ad and cannot 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 Ad does 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 response concerning section 2.1 of the Code of Ethics provided above, PointsBet has assessed the Ad against all remaining sections. As a result of that assessment, we remain firmly of the view that the Ad is 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 Ad 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 Ad does 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 Ad does not employ sexual appeal where minors, or people who appear to be minors are used (there are no minors depicted in the Ad). Having regard to the overall context of the Ad and the scenario depicted, PointsBet submits that it does not exploit or degrade any featured character nor do the exploit or degrade any individual or group of people not featured.

Section 2.3 – No violence

The Ad does not present or portray violence or any violent scene.



Section 2.4 – Treatment of sex, sexuality and nudity

The Ad does not feature themes or scenarios depicting sex, sexuality or nudity and there is no suggestion or treatment thereof.

Section 2.5 – Appropriate language

Considering the scenario depicted, overall context of the Ad and the interaction between the protagonists, PointsBet is firmly of the view that only language which is appropriate in the overall context of the Ad is used. The Ad does not feature any strong or obscene language.

Section 2.6 – Community Standards

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

Section 2.7 – Clearly advertising

The Ad is obvious, and clearly recognisable as advertising for the PointsBet brand and our wagering product.

Conclusion

PointsBet thanks Ad Standards for bringing the complaint 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 complaint and set out our reasoning concerning that complaint above, we respectfully submit that it has no merit and ask that the complaint 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 complainant’s concern that the advertisement discriminates against Australians.

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 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 complaint.