



Ad Standards Community Panel
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AdStandards.com.au

Ad Standards Limited
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Case Report

1. Case Number :	0234-22
2. Advertiser :	PointsBet Australia Pty Limited
3. Product :	Gambling
4. Type of Advertisement/Media :	TV - Free to Air
5. Date of Determination	26-Oct-2022
6. DETERMINATION :	Dismissed

ISSUES RAISED

AANA Code of Ethics\2.3 Violence
AANA Code of Ethics\2.5 Language

DESCRIPTION OF ADVERTISEMENT

This television advertisement features former basketball player Shaquille O'Neal (Shaq) and Australian comedy group the Inspired Unemployed.

The advertisement depicts the men wearing tradie clothes, sitting in a front yard. They cheer for a race on their phone and appear disappointed. One man turns to Shaq and suggests they rub his bald head for good luck. He tell them "I wouldn't go there boys". Another man joins the group and offers to let them rub his balding head. They do so while cheering at their phone again, but before the outcome becomes clear, Shaq says "C'mon boys, let's slap some mud on these bricks" and the group disperses, following his direction. As they pass him, he slaps two on the buttocks and tells them to "move your ass mate".

THE COMPLAINT

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

Shaq.... encouraging workers to get back to work with a smack on the backside and telling them to move their arse

Bullying and violence

3 men are manhandling and restraining the man obviously their senior at work, preventing him from doing his job



3 on 1

We should not be encouraging bullying in the workplace NOT funny

The main character in the add, which is set on a building site, slaps workmates on the buttocks telling them to get back to work. This is blatantly inappropriate workplace behaviour that in a real situation would be considered sexual abuse/ harrasment

Inappropriate language , bullying and put down tradies.

Bullying in the workplace is not acceptable.

The language is not appropriate particularly in prime time.

Shaquile advert about betting he says "get off your arses" I find that 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 letter issued by Ad Standards to PointsBet Australia Pty Limited ("PointsBet", "we", "us" or "our") on 13 October 2022 concerning our television commercial featuring the prominent American sports star Shaquille O'Neal ("Shaq") and the social media influencer group 'The Inspired Unemployed' playing characters on a typical construction site in Australia ("TIU"). The letter details complaints made by members of the public in relation to that television commercial.

We thank you for bringing the complaints to our attention. We have thoroughly considered the issues raised and will keep the complaints in mind when ideating and producing future television commercials. However, for the reasons set out below, we take the position that the television commercial is compliant with all applicable codes and legislative or regulatory regimes. Accordingly, we respectfully ask that all the complaints be dismissed without further action.

Should the Community Panel take a different view or require further clarity, we would be pleased to discuss.

Description of advertisement

The complaints relate to PointsBet's television commercial which features our protagonists played by Shaq and TIU in a construction scene. The television commercial is whimsical in tone and depicts a scenario that is so fanciful no reasonable viewer would consider it portrays, encourages, or condones any conduct that is in some way in breach of any of the applicable AANA codes. It is set during 'smoko' on a construction site. In this context, the term 'smoko' is a common colloquialism in Australia for the break on any construction site during which time all work has ceased, and meals or snacks are commonly consumed. The scene opens with TIU, playing a group of construction workers, watching a thoroughbred horse race on a mobile phone while on smoko enjoying a bite to eat. In the background, other construction workers can be seen standing safely and idly amongst the construction



site while enjoying smoko. Shaq is depicted as himself, off to the side of TIU in his plain clothes attire and it is obvious to the viewer that Shaq is not depicted as a person engaged in work on the construction site. As the scene progresses, TIU decide their runner will need a bit of “luck” to have a good result in the race they are watching and in a playful non-demonstrative tone ask to rub Shaq’s head for that luck. Shaq calmly and in a manner that does not depict or imply any offence, tells TIU not to “go there”.

Following the above exchange, a new protagonist playing the site supervisor enters the scene and happily exclaims “oih, you can rub my head”. It is only with this express grant of consent that TIU move towards the site supervisor and playfully rub his head as they continue to watch the race. This conduct is neither aggressive nor unwanted and the site supervisor is always a willing and engaged participant. The scene draws to a close with Shaq suggesting it is time to “snap some mud on these bricks”, a commonly used phrase referring to the rendering of brick work, a regular activity on any construction site. Following this statement, TIU make their way back to work and are playfully told by Shaq to move their “arse” while doing so. In this sense, the term ‘move your arse’ is used light-heartedly to denote that smoko is over and TIU should promptly get back to work.

The television commercial is hereafter referred to as the “Advertisement”.

Broader commentary on the PointsBet campaign

The Advertisement is part of a broader campaign comprising various exaggerated but common ‘Australian’ scenarios. The intent of the campaign is to in a light-hearted and fun way inform viewers that PointsBet itself is an Australian wagering company despite the businesses well known connection with America through brand ambassador Shaq. The campaign and the Advertisement each do this by celebrating Australia, its culture, and people as unique. This uniqueness extends to the Australian workplace where the meal break, smoko, has become known as a time for co-workers to mingle and have playful banter as they enjoy a meal and a break from the rigours of daily work. With this in mind, the Advertisement is intended to be an exaggerated take on the ordinary goings on between co-workers during smoko. The campaign utilises the uniqueness of smoko in a positive way to emphasise that like Australia and Australians, PointsBet too is “built different”.

Response to complaints

The complaints allege that the Advertisement in some way depicts:

- inappropriate workplace conduct;
- bullying and violence;
- sexual abuse or other form of harassment; or
- use of offensive or inappropriate language.

In reference to the complaints, Ad Standards has flagged the following sections of the AANA Code of Ethics (the “Code of Ethics”) for specific response by PointsBet:

- section 2.3 (violence / bullying);
- section 2.3 (violence / sexualised violence); and
- section 2.5 (language / inappropriate language).



PointsBet takes its obligations under the Code of Ethics and the AANA Wagering Advertising Code (the “Wagering Code”) very seriously and rejects that the Advertisement breaches either code. To that end, each of the specific matters identified by the complaints and Ad Standards is addressed immediately below.

Code of Ethics, section 2.3 (violence / bullying)

Ad Standards considers that the complaints potentially raise issues related to bullying and violence which may be contrary to section 2.3 of the Code of Ethics. That section provides as follows:

“Advertising shall not present or portray violence unless it is justifiable in the context of the product or service advertised.”

Also relevant:

- the term ‘bullying’ is defined by the National Centre Against Bullying as “an ongoing and deliberate misuse of power in relationships through repeated verbal, physical and/or social behaviour that intends to cause physical, social and/or psychological harm”; and*
- the term ‘violence’ is defined in the Britannica online dictionary as “an act of physical force that causes or is intended to cause harm”.*

PointsBet respectfully submits that both these definitions are consistent with the commonly understood meaning of those terms held by Australians and by extension, the intended viewers of the Advertisement.

PointsBet does not condone any form of bullying or violence. As an organisation, PointsBet has in place policies and training for its staff to specifically prevent any such conduct.

PointsBet strongly disagrees that the Advertisement (in context of the scene depicted) presents or portrays any conduct that a reasonable viewer (having regard for the definitions provided above) would consider depicts bullying of or violence towards any of the protagonists. In this regard, the particular complaint alleges that the relevant portion of the Advertisement is that which depicts TIU rubbing the head of the site supervisor. The complainant alleges that this part of the Advertisement encourages workplace bullying by depicting the “manhandling and restraining” of that site supervisor by TIU. PointsBet refutes this. As described above in the section entitled ‘Description of advertisement’, the site supervisor is clearly a willing participant in the conduct having provided unequivocal and express consent to the conduct. The scene is shot playfully, with the site supervisor smiling and participating enthusiastically in the frivolity of watching the race. Clearly, TIU neither manhandle or restrain the site supervisor and he is not depicted (nor is it implied that he is) in any distress whatsoever. Further, the attire of the site supervisor being more formal than that of TIU clearly creates an impression that he is in a position of authority over TIU and so, if desirous that the conduct should cease, could easily cause that to occur by exercising responsibly the authority of his senior position on the construction site. No physical



harm, social or psychological harm is depicted or implied and there is no suggestion that the exaggerated head rubbing is anything other than once off light-hearted banter between co-workers.

On this basis, PointsBet submits that there are no grounds for a determination that the Advertisement presents or portrays any conduct that could reasonably be interpreted as depicting bullying or violence that is contrary to section 2.3 of the Code of Ethics. Accordingly, we ask that the complaint be dismissed.

Code of Ethics, section 2.3 (violence / sexualised violence)

Ad Standards considers that the complaints potentially raise issues related to sexualised violence in the form of harassment or abuse which may be contrary to section 2.3 of the Code of Ethics. Relevantly, the text of section 2.3 of the Code of Ethics and the definition of violence is provided immediately above. In this context, the term sexual violence is commonly understood to be a catch all term referring to sexual behaviours or sexual acts (including harassment and abuse) committed against the will of the person to whom the behaviours or acts are directed.

PointsBet does not in any way condone sexual violence or any form of harassment or abuse. As an organisation, PointsBet has in place policies and training for its staff to specifically prevent any such conduct.

PointsBet refutes any assertion that the Advertisement (in context of the scene depicted) presents or portrays any conduct that a reasonable viewer (having regard for the definitions provided above) would consider encourages or condones sexual violence or sexual misbehaviour in any way. In this regard, the portion of the Advertisement complained about is the final part of the scene during which Shaq jovially tells TIU to move their "arse" as they make their way back to work. While making that statement, it is implied that Shaq taps two of the TIU protagonists from behind as they pass him by. Importantly, in context of the Advertisement there is no suggestion (either by depiction or implication) that the implied tap is at all violent or sexual in nature. It is a soft, exaggerated gesture that is fanciful in nature and not shot in a way that any reasonable viewer would consider to be a depiction of sexualised, abusive, or harassing conduct. The overall tone of the Advertisement is playful and neither the tap or any other treatment depicted or implied could reasonably be interpreted as anything other than friendly banter between mates.

On this basis, PointsBet submits that there is no basis for the complaint and that no reasonable grounds exist on which a determination could be made that the Advertisement encourages or condones sexualised violence in any way. Accordingly, we ask that the complaint be dismissed.

Code of Ethics, section 2.5

Ad Standards considers that the complaints raise potential issues related to use of inappropriate language under section 2.5 of the Code of Ethics. This section provides 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.”

To this effect, the complaints allege that use of the slang term “move your arse” by Shaq towards the TIU protagonists is in some way inappropriate or offensive. It is well established that innocuous phrases which are commonly used in 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.

Colloquially, it is well established that the term “move your arse” is commonly used as a means of telling another person to move out of the way or hurry up with whatever it is that they are doing (or supposed to be doing) at the time in which the phrase is uttered. In context of the Advertisement, Shaq uses the phrase in a friendly and humorous tone as a means of encouraging the TIU protagonists to get back to work now that their smoko has finished. The term is not used in any manner that could reasonably be considered aggressive or inconsistent with its ordinary usage whether generally or on any construction site in Australia.

For the reasons set out above PointsBet submits that neither of the term “move your arse” nor use of any other word, phrase or term in the Advertisement is language that, in context, is inappropriate. Accordingly, PointsBet submits that there are no grounds for a determination that the Advertisement breaches section 2.5 of the Code of Ethics and we respectfully ask that the complaints be dismissed.

General assessment against the Code of Ethics

In addition to the specific responses concerning section 2.3 and section 2.5 of the Code of Ethics provided above, PointsBet has assessed the Advertisement against all remaining sections. As a result of that assessment, PointsBet is of the view that the Advertisement is compliant with the Code of Ethics and that all complaints should be dismissed.

We make the following observations about each section of the Code of Ethics as they relate to the Advertisement:

Section 2.1 – No discrimination or vilification

The Advertisement does not portray or depict any 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 Advertisement does not employ sexual appeal where minors, or people who appear to be minors are used. No minors are depicted in the Advertisement. Having regard to the overall context of the Advertisement and the scenario depicted,



PointsBet submits it does not exploit or degrade any featured protagonist nor does it exploit or degrade any individual or group of people not featured.

Section 2.3 – No violence

For the reasons described above, the Advertisement does not present or portray violence (including sexualised violence) or any bullying or other violent scene.

Section 2.4 – Treatment of sex, sexuality and nudity

The Advertisement does not feature themes or scenarios depicting sex, sexuality or nudity and there is no suggestion, depiction, treatment, or portrayal of any matter related to the same.

Section 2.5 – Appropriate language

For the reasons described above, and considering the scenario depicted in the Advertisement, PointsBet is firmly of the view that all language used in the Advertisement, including the term “move your arse”, is appropriate, consistent with colloquial usage and not offensive or inappropriate in context. The Advertisement does not feature any strong or obscene language.

Section 2.6 – Community Standards

Having regard to the overall context of the Advertisement and the scenarios depicted, there is no material contrary to prevailing community standards on health and safety depicted. Protagonists are at all times depicted as acting safely and responsibly having regard to the workplace within which the scene is set and the fact that work has very clearly ceased during smoko.

Section 2.7 – Clearly advertising

The Advertisement is obviously and clearly recognisable as advertising for the PointsBet brand and our wagering products and services.

General assessment against the Wagering Code

No issues under the Wagering Code have been raised in the complaints or by Ad Standards. Despite this, PointsBet has assessed the Advertisement against the Wagering Code and as a result of that review, we are confident that the Advertisement is wholly compliant with the Wagering Code.

We make the following comments regarding each individual section of the Wagering Code:

Section 2.1 – Not directed at minors

PointsBet respectfully submits that the Advertisement is not directed primarily (or at all) to minors.

Section 2.2 – No depiction of minors

The Advertisement does not feature minors.

Section 2.3 – No depiction of young people wagering



The Advertisement 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 26 or older.

Section 2.4 – No alcohol

The Advertisement does not portray, condone, or encourage wagering in combination with the consumption of alcohol. In fact, no alcohol is depicted or implied to be consumed during the Advertisement.

Section 2.5 – No promise of win

Having regard to the overall context of the Advertisement and the scenario depicted, it is clear that there is no express or implied promise of winning outcomes. In fact, to the extent that the act of wagering is portrayed in the Advertisement, the fanciful scenario that sees the TIU protagonists seeking additional ‘luck’ clearly implies that not winning is a very real possibility of wagering.

Section 2.6 – No relief from difficulty

The Advertisement 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 Advertisement 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 Advertisement 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 Advertisement. The protagonists are very clearly on a break from their daily work and all wagering is ceased immediately on Shaq’s call that TIU return to work. Clearly then, the Advertisement does nothing more than position wagering as an acceptable form of adult entertainment.

Section 2.9 – No peer pressure

The Advertisement does not portray, condone, or encourage peer pressure to wager, nor does it disparage abstention from wagering activities.

THE DETERMINATION

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

The Panel noted the complainants concerns that the advertisement:

- Depicts behaviour which would constitute bullying or harassment in the workplace
- Contains inappropriate language



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

Section 2.3: Advertising shall not present or portray violence unless it is justifiable in the context of the product or service advertised

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

"Although the depiction of violence in an advertisement may be relevant to the story being told in the advertisement, any violence must also be justifiable in the context of the product being advertised, or else will be in breach of this section of the Code... The results or consequences of violence (e.g. a black eye) and audio representations of violence may also be prohibited."

The Panel noted the advertiser's response that the advertisement implies that Shaq taps two of the other men from behind as they pass him, but there is no suggest that the tap is at all violent or sexual in natures and was not shot in a way which would be considered sexualised, abusive or harassing conduct.

Does the advertisement contain violence?

The Panel noted that the Code and the Practice Note do not provide a definition of violence. The Panel noted that they needed to consider whether the general community would consider this ad to portray violence.

The Panel noted that social and legal attitudes towards consent in and out of the workplace had changed recently, and advertisers should take care with any suggestion of inappropriate touching in the workplace.

The Panel considered that the depiction of someone touching another person on the bottom without their consent would be considered sexual harassment or assault. The Panel considered that most members of the community would understand sexual assault to be a form of violence.

However, in this instance the Panel considered that there was no indication in the advertisement that the tap on the bottom, or the rubbing of the man's head, was unwelcome conduct. The Panel considered that the man verbally gives permission for the others to rub his head before they touch him, and that this wouldn't be considered by most members of the community to be bullying or harassment.

The Panel noted that the tap on the bottom was more commonly associated with a sporting field than with a workplace, however considered that this action was performed by a well known and recognised former basketballer for the promotion of sports wagering, and therefore the action was not out-of-context. The Panel considered that the tap was not sexualised, violent or aggressive and the recipients don't appear upset by the action.



Overall, the Panel considered that the advertisement did not depict behaviour which would be classified as sexual harassment or assault, and as such the advertisement could not be seen to contain violence.

Section 2.3 Conclusion

The Panel determined that the advertisement did not present or portray violence and therefore did not breach Section 2.3 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 considered that the word “arse” would be considered by most members of the community to be mild and part of the accepted vernacular. The Panel considered that such language is not uncommon among adults, and the phrase “move your arse” was a commonly used phrase to encourage someone to hurry up.

The Panel considered that most members of the public would consider the use of the word to be appropriate when used in the context of the phrase depicted in the advertisement.

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 Code the Panel dismissed the complaint.