



## Case Report

1	Case Number	0236/17
2	Advertiser	Sportsbet
3	Product	Gaming
4	Type of Advertisement / media	Internet-Social-FB
5	Date of Determination	24/05/2017
6	DETERMINATION	Upheld - Modified or Discontinued

### ISSUES RAISED

- Other Social Values
- 2.6 - Health and Safety Within prevailing Community Standards

### DESCRIPTION OF THE ADVERTISEMENT

On Facebook it is: We're STILL putting the 'Roid in Android

### THE COMPLAINT

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

- 1. He has been found to be a drug cheat and had his medals taken away so should not be making money from advertising*
- 2. It teaches young people that cheating at sports is OK and taking drugs is OK as you can still earn money from advertising. It sends the wrong message to youth.*

*It is indirectly promoting the use steroids in sports and gives the impression that all athletes in sport use steroids. It creates a link between using steroids and great benefits without consequences.*

### THE ADVERTISER'S RESPONSE

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

*The essence of the Complaints assert that:*

- *it is not cool to have [Ben Johnson] used in a gambling add: not at all...*
- *Ben Johnson is not a role model*
- *The ad is promoting and glorifying the use of steroids in sport*
- *The ad promotes the use of steroids to enhance your performance, to be a better gambler with the new app for android devices*
- *It promotes to children watching that getting any advantage in betting as a positive and necessary act, like in sports*
- *Promotes banned athletes and puts them in the spotlight*
- *There did not seem to be any implication that using performance enhancing drugs is wrong, bad for your health or just a stupid thing to do*

*The ASB has identified section 2.6 of the AANA Code of Ethics (Code) as the section which may have been breached based on the Complaints:*

*2.6: Advertising or Marketing Communications shall not depict material contrary to Prevailing Community Standards on health and safety.*

*Sportsbet's response to the Complaints*

*Sportsbet has considered the Complaints and strongly considers that the Advertisements do not breach section 2.6, or any other section of the Code for the reasons set out below.*

*1. First and foremost, the nature of an overwhelming majority of the Complaints is, with respect, irrelevant. The ASB is required to make a determination on whether or not the Advertisements breach the advertising requirements within the Code, particularly section 2.6. However, overwhelmingly, the whole tenor of the Complaints appear to be based on the complainants' own personal preferences, values or tastes and not on whether or not the Advertisements depict material contrary to Prevailing Community Standards on health and safety.*

*2. A further threshold issue is that the Advertisements are clearly and obviously a spoof and parody. They are in no way intended to be – nor could a viewer reasonably consider them to be – a portrayal of a realistic situation. Viewed in this way, the propensity of the Advertisements to depict material contrary to Prevailing Community Standards is significantly reduced.*

*3. Further, the Advertisements mock and deride athletes who have taken performance enhancing drugs. In no way, do the Advertisements glorify or promote the use of these substances. Although an attempt has been made to do this in a humorous way, it cannot be properly said that exposing drug cheats and their achievements to such mockery and derision could be said to be contrary to Prevailing Community Standards. On the contrary, ordinarily this sort of ridicule would be considered to have negative connotations and a deterrent effect – something which could reasonably be expected to be in line with Prevailing Community Standards.*

*4. The fact that Sportsbet has paid Mr Ben Johnson a sum of money to appear in the Advertisements and promote Sportsbet's Android App and that doesn't 'sit well' with a pocket of the community based on their moral compass or otherwise is plainly irrelevant for the purposes of the determination to be made by the ASB.*

5. *Advertising by its very nature is at times somewhat divisive and not all advertisements are universally warmly welcomed based on people's own unique personalities and dispositions. Regardless – this simply does not elevate apparent concerns of that nature to advertising which is either relevant to, let alone contrary to Prevailing Community Standards on health and safety within the meaning of the Code.*

6. *Sportsbet does not in any way condone or encourage the use of performance enhancing drugs. As a wagering operator, Sportsbet's business is built on the integrity of the underlying sporting and racing events that it offers markets on. Sportsbet works closely with sports controlling bodies, racing bodies and government agencies to eradicate integrity risks. With respect, it is ill-informed to suggest that Sportsbet, or any of the Advertisements, condone or encourage prohibited drugs in sport.*

7. *The Advertisements do not show any drugs, nor do they refer to any drugs or in any way endorse or encourage the use of drugs. Simply showing people who have used, or are suspected to have used, performance enhancing drugs is not 'unhealthy' or 'unsafe', nor in any way in breach of the Code.*

8. *The Advertisements feature Mr Johnson and other 'performance enhancement experts' who are known or suspected to have used steroids to gain an unfair advantage, together with a play on the word 'roid', to promote Sportsbet's new Android App as something that is 'performance enhanced' and something that Sportsbet's Android customers should download.*

9. *Playing on this theme, the Advertisements include humorous steroid-related references such as 'jacked up' and 'juiced up' and 'everyone's on it' to promote the enhanced nature of the Android App. From this, there can be no reasonable deduction that Sportsbet is endorsing the use of illicit drugs.*

10. *The examples of performance enhancement shown in the Advertisements are clearly comical in nature and do not present themselves as real outcomes achievable through taking performance enhancing drugs. This includes showing Mr Johnson at the starting blocks lifting both of his hands off the ground in an unnaturally balanced position, the size of the weight that the Eastern Bloc weightlifter is lifting, and smoke coming from the cyclist's tyres to depict the speed he is generating.*

11. *These performance enhanced outcomes are in no way endorsed by Sportsbet in the Advertisements. If anything, the Advertisements mock the featured athletes by showing muscles in grotesque proportions and showing their performances as overt demonstrations of cheating. This is supported by the references in the Advertisements to an 'unfair' advantage that the Android App provides as an analogy to the unfair effect of taking performance enhancing drugs.*

12. *There is no statement or suggestion in the Advertisements that taking performance enhancing drugs is without consequence. On the contrary, the limited nature of Mr Johnson's limited short-term 'success' as a result of taking performance enhancing drugs is belittled by the subtle reference to the fact that he was awarded the 1988 Olympic gold medal for only 48 hours.*

13. *There is no suggestion in the Advertisements that performance enhancing drugs*

*should be used by anyone. The reference to ‘get on it’ cannot be reasonably interpreted in the context of any of the Advertisements in totality in conjunction with the product that it is advertising as anything other than to download the Android App.*

*14. Sportsbet rejects that the Advertisements in any way encourage children to use steroids. The Advertisements depicts adults in adult situations and is clearly targeted towards adults who will understand the humorous and exaggerated nature of the Advertisements, as described above.*

*15. The Advertisements are shown in strict compliance with regulatory requirements for when wagering advertisements are able to be shown. The fact that some pockets of the community object to the ability for wagering companies to advertise their product or that the Advertisements have been shown during a particular sporting event and/or co-viewed with a minor is entirely irrelevant in considering whether or not it breaches section 2.6 of the Code.*

*16. While we acknowledge that the Advertisements have attracted a number of complaints from pockets of the community wishing to express their personal preferences, values or tastes, the broader community sentiments are overwhelmingly positive, including a significant amount of support for the Advertisements through social media commentary. Support for the Advertisement has also come from prominent media personalities and social commentators such as 3AW’s Neil Mitchell, who has described complaints about the Advertisements as an ‘overreaction’ and commented further that ‘The only problem I have is that I believe he was paid’. In addition, among the raft of public opinion and commentary that are simply miffed at some of the fuss that has ensued following publication of the Advertisements – we draw your attention to the following:*

- the opinion article in the Sydney Morning Herald on 20 May 2017 titled ‘Critics of Johnson campaign rush to wrong conclusion’ (enclosed);*
- the Your Say section of the Herald Sun on 19 May 2017 titled ‘Most HeraldSun.com.au readers don’t think the Ben Johnson betting ad crosses the line (enclosed); and*
- the Opinion in the Herald Sun by prominent social commentator Susie O’Brien titled ‘Johnson just a sideshow on a dubious circus’ on 16 May 2017 (enclosed).*

#### *Conclusion*

*With the above in mind, the Advertisements cannot reasonably be interpreted as in any way depicting material contrary to Prevailing Community Standards on health and safety.*

*In Sportsbet’s submission the Complaints lack foundation and should be dismissed.*

## **THE DETERMINATION**

The Advertising Standards Board (the “Board”) considered whether this advertisement breaches Section 2 of the AANA Code of Ethics (the “Code”).

The Board noted the complainants concerns that the advertisement creates a link between using steroids and great benefits without consequence.

The Board noted that the employment of a particular person in an advertisement ie: Ben

Johnson is an issue that is not within the Code of Ethics or Wagering Code and that this was not considered.

The Board viewed the Facebook advertisement and noted the advertiser's response.

The Board considered Section 2.6 of the Code. Section 2.6 of the Code states: "Advertising or Marketing Communications shall not depict material contrary to Prevailing Community Standards on health and safety".

The Board noted the advertisement features predominantly, Ben Johnson an athlete who represented Canada as an Olympian in the 1980s, promoting the new betting app for Sportsbet. The advertisement includes scenes of actors who are depicted to suggest other athletes known to have used performance enhancing drugs such as a Russian weight lifter, a Chinese swimmer and an American cyclist.

The Board noted that the Australian Sports Anti-Doping Authority and its international counterparts identifies substances and methods that athletes cannot take or use. Steroids and their related substances are on the banned substance list <https://www.wada-ama.org/en/resources/science-medicine/prohibited-list-documents>. The Board noted that the ban on the use of these types of drugs in sport is widely accepted as the community standard on the taking of performance enhancing drugs and noted that substances can appear on this list for reasons including 'The substance or method has the potential to risk the athlete's health.'

The Board also noted that the use of performance enhancing drugs is widely seen as being potentially harmful to the health of athletes and there are a number of government strategies in the community to educate athletes  
<http://www.health.gov.au/internet/main/publishing.nsf/content/illicit-drugs-in-sport>.

The Board noted that the advertisement states that Ben is "an expert in performance enhancement, which is why he is happy to endorse Sportsbet's new juiced up android app." The Board noted the advertisement shows other actors portrayed as athletes endorsing the new App as well. The Board considered that the context of the advertisement is to play on the word 'Android' when promoting the android version of its new app, and create references to 'roids', a slang term for steroids often associated with performance enhancement in sport and fitness.

The Board considered that there are numerous references and double entendres in the advertisement which are intended to mean steroids even though it would also be clear to the consumer that the advertised product is a wagering app.

Specifically the Board noted numerous statements in the advertisement: "when it comes to performance enhancement – Ben really knows his stuff."; "new juiced up android app."; "this thing is a hit with performance enhancement experts all over the world."; "everyone's on it."; "scientific stuff injected into its back end."; "faster if you cut a few corners."; "its unfair advantage is endorsed by all the experts."; "new jacked up, pumped up, feature injected android app, puts the roid in android," "it's like you say, very powerful stuff," "more speed, more power and extra gear," "it tested positive for speed and power again and again."

The Board noted the advertisement refers to the App having greater speed meaning that you

can use the app even more quickly and get a bet on in “record breaking time” and that this is supported by Ben’s comment that it can be done faster “if you cut a few corners.” The advertisement also refers to “putting the roid in android” was a direct reference to the use of steroids and that this in conjunction with the depiction of Ben Johnson was a clear connection to his steroid use.

The Board considered that, while there is no depiction of drug use in the advertisement, the advertisement makes numerous clear references to drug use and in the Board’s view can clearly be considered to be a reference to drug use and that a strong reference to an activity does amount to ‘depiction’ within the terms of the Code of Ethics. The Board then considered whether the drug use is depicted in a manner that appears positive or in a manner that is contrary to prevailing community standards on health and safety.

The Board considered that the advertisement overall suggests that the ‘roid’ is a positive element to the new App and encourages people to use the new App and to bet quickly. The Board considered that the impression of the advertisement makes light of drug use and that the use of drugs will enhance performance.

The Board noted the advertiser’s response that “the advertisements are clearly and obviously a spoof and parody. They are in no way intended to be – nor could a viewer reasonably consider them to be – a portrayal of a realistic situation.” The Board also noted that the advertiser considered that “the advertisement mocks athletes who have used performance enhancing drugs and does not glorify or promote the use of those substances.”

The Board considered that the use of a spoof or parody may be the vehicle to deliver the promotion in a humorous way, but that the use of humour does not necessarily outweigh or justify a message that reasonable people in the community might take from an advertisement. The Board also noted that there will be a range of views in the community about how humour in a particular advertisement affects the message of the advertisement.

The Board noted that the advertisement depicts a known Olympic drug cheat and references other athletes who have been found to use performance enhancing drugs. In the Board’s view this depiction is done in a way that makes light of their use of a substance that is banned for use in sport. In the Board’s view the use of Ben Johnson in conjunction with a humorous message about drug use conveys a message that there is not a negative side to drug use and cheating and could be seen as a suggestion that there are benefits to gain from cheating or from behaviour that will enhance your performance. The Board also considered that, despite the parody, there is little consequence depicted for these actions as the athletes are portrayed in a positive way, rather than showing a negative side to the choices they made in their sporting careers. The Board considered that the reference to Ben Johnson being stripped of his Olympic medal was minimised as a negative consequence by virtue of his now being depicted in a positive manner in the advertisement.

In the Board’s view, the overall tone of the advertisement makes light of the use of performance enhancing drugs and of using performance enhancing drugs to cheat in sport. The Board did not consider that the advertisement condoned or encouraged drug use, but noted that section 2.6 of the Code requires only that there is a depiction of an activity that is contrary to prevailing community standards on health and safety.

The Board considered that the prevailing community standard on health and safety is opposed

to the use of performance enhancing drugs in sport and to avoid drug use more generally. In the Board's view the advertisement depicts performance enhancing drug use in sport in a manner that is contrary to prevailing community standards on health and safety.

The Board therefore determined that the advertisement breached section 2.6 of the Code. The Board noted the advertisement placement on Facebook and considered that Facebook was not a medium that was directed to children and that young children would be unlikely to understand the double entendre references to drug use and that there was no breach of the Code on this basis.

Finding that the advertisement did breach section 2.6 of the Code, the Board upheld the complaints.

### **THE ADVERTISER'S RESPONSE TO DETERMINATION**

Confirming the advertisement from our Android campaign was taken off air from Friday 2nd June onwards and will be modified following the upheld complaints against them.