

Case Report

1. Case Number :	0260-22
2. Advertiser :	Sportsbet
3. Product :	Gambling
4. Type of Advertisement/Media :	Internet - Social - Other
5. Date of Determination	23-Nov-2022
6. DETERMINATION :	Dismissed

ISSUES RAISED

AANA Wagering Code\2.1 Directed to Minors
AANA Wagering Code\2.3 Depicting 18-24 year olds

DESCRIPTION OF ADVERTISEMENT

This TikTok advertisement features a young man in a class of 2017 jumper walking down the street and reading a text on his phone. The text says “Hey love! Make sure you get an outfit for the races xoxo”, and includes some horse and clothing emojis. The man then heads to the local Savers thrift shop and purchases items with text on screen accompanying each:

- “Shoes that definitely don’t fit: \$7”;
- “Shirt that looks good in the dark...: \$9.50”;
- “Glasses you can afford to lose: \$2.95”;
- “The never get lost in a crowd jacket: \$11.95”;
- “The pants that your dad wears: \$6.70”; and
- “Tie that I can’t do myself: \$2”.

When the man is fully “dressed to impress” he leaves the store and the final text on screen states: “That feeling like you’re about to go 0/10 at the track... Priceless”.

THE COMPLAINT

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

The protagonist in the ad is wearing a Class of 2017 Plenty Valley Christian College school jumper, to advertise gambling... This ad highly is inappropriate as his clothes target individuals of school-age in the normalisation of betting, and is irresponsible to

promote 'last-minute' betting to such an impressionable age. Advertising such high-risk activity to a young audience is very dangerous and should break advertising code-of-conduct, the wearing of school uniform while engaging in these activities is not okay.

THE ADVERTISER'S RESPONSE

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

We refer to your letter dated 10 November 2022 (Letter) regarding a complaint (Complaint) received by Ad Standards concerning Sportsbet's 'Savers Video' released on TikTok during the recent Spring Racing Carnival (Advertisement), a digital copy of which is enclosed.

Ad Standards has identified the Complaint as raising issues with sections 2.1 and 2.3 of the AANA Wagering Advertising Code (Code).

Sportsbet strongly rejects any suggestion that the Advertisement breaches section 2.1 or 2.3 of the Code (or any other section) for the reasons explained below. As always, Sportsbet takes its obligations under the Code very seriously and is committed to ongoing compliance.

What does the Code prohibit?

Section 2.1 of the Code provides that advertising or marketing communications for a wagering product or service must not, having regard to the theme, visuals and language used, be directed primarily to minors. Pursuant to the AANA's Practice Note in respect of the Code (Practice Note):

- section 2.1 of the Code does not apply to advertising which is directed primarily to adults; nor does it apply to advertising that may be seen by minors, but is not directed primarily to them;*
- whether an advertisement is "directed primarily to minors" is an objective test (and is not to be determined based on the subjective views of one complainant);*
- it is a combination of visual techniques, and age of characters and actors, which will mean that 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"; and*
- the Community Panel will consider whether advertisers have taken reasonable steps to prevent minors from viewing advertising or marketing communication, for example by age-gating online material.*

Section 2.3 of the Code provides that advertising or marketing communications for a wagering product or service must not depict a person aged 18-24 years old engaged in wagering activities. It is self-evident that, to contravene this section of the Code, the depiction must show the individual engaging in wagering activity. The Practice Note

explains that the age restriction is to avoid the possibility that the individual may appear to be under 18 years of age.

The Advertisement

It is crucial that the Advertisement is properly construed as to its overall theme and context. In that regard, the Advertisement does not refer to betting, wagering or gambling at all. Rather, the Advertisement focuses on a male (who is 29 years old) visiting a Savers thrift shop to purchase an outfit for the races.

The Advertisement commences with a man walking down the street and reading a text on his phone. It does not say who the text is from, but presumably it is from a partner, housemate, parent or the like. The final text says “Hey love! Make sure you get an outfit for the races xoxo”, and includes some horse and clothing emojis. The man then heads to the local Savers thrift shop and purchases:

- “Shoes that definitely don’t fit: \$7”;*
- “Shirt that looks good in the dark...: \$9.50”;*
- “Glasses you can afford to lose: \$2.95”;*
- “The never get lost in a crowd jacket: \$11.95”;*
- “The pants that your dad wears: \$6.70”;* and
- “Tie that I can’t do myself: \$2”.*

When the man is fully “dressed to impress” and ready to attend the races (or possibly a races party), the final line is: “That feeling like you’re about to go 0/10 at the track... Priceless”.

Sportsbet categorically rejects the complainant’s allegation that the Advertisement promotes “last-minute” betting, that it targets school-aged children, or that it includes a school uniform. In Sportsbet’s respectful submission, based on the overall theme and context of the Advertisement as a whole, there is no reasonable basis to enliven sections 2.1 or 2.3 (or any other section) of the Code.

Section 2.1 – Advertisement not primarily directed to minors

Sportsbet submits that, when viewed objectively, the Advertisement is not “directed primarily to minors”. On the contrary, it is targeted exclusively at adults.

The Advertisement contains no reference whatsoever to minors, and Sportsbet’s content on TikTok is age-gated to users 21 years or older so that it cannot be lawfully viewed by minors. As noted above, the Practice Note rightly directs the Community Panel to consider this in assessing whether the Advertisement is directed primarily to minors. Sportsbet implements this age gating tool because it does not want minors to view the Advertisement.

When viewed objectively, it is plain that the Advertisement is exclusively directed to adults. In particular, the Advertisement is directed to adult males who want to “dress

to impress” when attending the races during the Spring Racing Carnival, but do not want to spend too much money on their attire.

Sportsbet categorically rejects the complainant’s allegation that the Advertisement uses a Class of 2017 Plenty Valley Christian College jumper to advertise gambling. The use of the hooded jumper is incidental to the overall theme, visuals and language/text used in the Advertisement. There is no reference to any school.

The central theme of the Advertisement is the promotion of a specific, short-term cultural phenomenon related to the Spring Racing Carnival – the wearing of outrageous attire that is not worn day-to-day in an office or working environment. This includes bright colours, hats, mis-matched colour schemes and the like for the purposes of “showing off” and standing out in the crowd. Such attire is not intended to be taken seriously – it is meant to be fun.

Minors are not represented in the Advertisement at all, nor does the Advertisement depict any environment normally associated with minors. While some minors undoubtedly have an interest in dressing up during the Spring Racing Carnival, the Practice Note provides that section 2.1 of the Code only applies to advertising directed primarily to minors. That rule is particularly relevant in the context of this Advertisement, which is clearly not directed to minors – primarily or otherwise. Otherwise, it could be argued that any advertising which promotes the Spring Racing Carnival or professional sport, even without a reference to wagering activities, contravenes section 2.1 of the Code. That is clearly not the intention of the Code.

For these reasons, Sportsbet respectfully submits that the Advertisement does not breach section 2.1 of the Code.

Section 2.3 – Advertisement does not depict anyone engaging in wagering activity

The Advertisement does not depict the main actor, or any other person, engaging in wagering activities of any kind. It certainly does not depict a person aged 18-24 years old engaged in wagering activities. As noted above, the main actor is 29 years old. Nevertheless, even if the actor is perceived to be 18-24 years old, section 2.3 of the Code cannot be contravened unless the advertisement depicts a person engaging in wagering activity. The Advertisement does not do so.

There is no reference to wagering of any kind in the text message at the start of the Advertisement. There is no ability to place a bet in the Savers thrift shop. The actor does not use or purport to use, open, install or register a betting app at any stage. While the reference to “about to go 0/10 at the track” could possibly be construed as an allusive reference to wagering, this falls well short of depicting anyone engaged in wagering activities. In this regard, the Code provides that:

“the term “wagering activities” refers to the express or implied portrayal of placing a wager (bet) on an uncertain outcome using a Wagering Product or Service. The depiction of “wagering activities” may also include the express or implied portrayal of

wagering–related ancillary activities used in combination with, a Wagering Product or Service, such as checking odds or discussing wagering tips in connection with placing a wager or bet.”

However, even if the Advertisement depicted a person engaging in wagering activities (which it does not), the person depicted is not 18-24 years of age. In that regard, the Practice Note makes clear that the primary purpose of the age restriction in section 2.3 is to avoid the possibility that the individual may appear to be under 18 years of age. As noted above, the overall theme and context of the Advertisement makes it plainly obvious that the individual is not under 18 years of age.

Finally, the Practice Note confirms that individuals aged 18-24 may be featured in wagering advertising without breaching the Code (for example, if they are depicted in a place where a bet can be placed) provided that the individual is not depicted engaging in wagering activity. That is the case even if there is the ability for the individual to place a bet. Accordingly, even if the individual depicted in the Advertisement was 18-24 years old (which he is not) and there was an ability for him to place a bet (which there is not), the Advertisement would not breach section 2.3 of the Code.

Conclusion

For the reasons outlined above, Sportsbet submits that the Advertisement does not satisfy the basic threshold requirements to enliven either section 2.1 or 2.3 of the Code. The Advertisement is clearly not directed (primarily or otherwise) to minors, and is age gated so it cannot be lawfully viewed by minors. The actor is 29 years old and he is not depicted engaging in wagering activity of any kind. Sportsbet respectfully submits that the Community Panel should dismiss the Complaint.

THE DETERMINATION

The Ad Standards Community Panel (Panel) considered whether this advertisement breaches the AANA Wagering Advertising and Marketing Communication Code (Wagering Code).

The Panel noted the complainant’s concerns that the advertisement targets individuals of school-age by depicting a person in a school jumper engaging in wagering activities.

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 man is wearing a jumper which states “Class of 2017-PVCC”. The Panel noted that PVCC is a school for students Kindergarten-Year 12, however noted that that is not made clear from the jumper and considered that it could easily be a university jumper, and that for the vast majority of viewers it would only be apparent that it was a school jumper after undertaking some research.

The Panel further noted that “class of” jumpers are very common and that many people choose to wear their school jumpers many years after purchase.

The Panel noted that the man is shown to be visiting an op-shop to purchase clothes for the races, and considered that this is a theme which would be appealing to high-school aged students, however is equally appealing to adults in their late teens and early twenties.

The Panel noted that TikTok is a medium used by minors, however noted the advertiser's response that their advertising is age-gated to user aged 21 and over so that it cannot be lawfully viewed by minors. The Panel noted this is not a requirement under the Code.

The Panel considered that while the themes, visuals and language of the advertisement may have some appeal to minors, it is not directed primarily to 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.

Wagering Code Section 2.3 - Advertising or Marketing Communication for a Wagering Product or Service must not depict a person aged 18-24 years old engaged in wagering activities.

The Panel noted the advertiser's response that the man depicted in the advertisement is 29 years old. The Panel noted that he is wearing a jumper which states "Class of 2017-PVCC". The Panel noted that that is a school for students Kindergarten-Year 12, however noted that that is not made clear from the jumper and considered that it could easily be a university jumper.

In any case, the Panel considered that even if some viewers interpreted the man as being under 25, the advertisement does not show him engaged in wagering activities. While the advertisement may be promoting attendance at the races and the wagering company generally, he is not shown placing a bet, or using the wagering app at all.

Wagering Code Section 2.3 conclusion

The Panel determined that the advertisement did not depict a person aged 18-24 engaged in wagering activities and did not breach Section 2.3 of the Wagering Code.

Conclusion

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