



Ad Standards Community Panel
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AdStandards.com.au

Ad Standards Limited
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Case Report

1. Case Number :	0317-21
2. Advertiser :	PointsBet Australia Pty Limited
3. Product :	Gambling
4. Type of Advertisement/Media :	TV - Free to Air
5. Date of Determination	10-Nov-2021
6. DETERMINATION :	Dismissed

ISSUES RAISED

AANA Wagering Code\2.8 Excess participation
AANA Code of Ethics\2.1 Discrimination or Vilification

DESCRIPTION OF ADVERTISEMENT

Golf Lesson – This advertisement features Shaquille O’Neal and retired golf professional Paige Spiranac. Ms Spiranac is giving Mr O’Neal a golf lesson.
Dog Show - This advertisement features Shaquille O’Neal in a dog show setting with an Afghan Hound.
Car Maintenance - This advertisement features Shaquille O’Neal performing maintenance on a vehicle in a garage.
Massage - This advertisement features Shaquille O’Neal receiving a massage by three women.
Painting - This advertisement features Shaquille O’Neal painting while a horse and jockey pose.

THE COMPLAINT

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

I am concerned that this series of advertisements glorify and make light of problem gambling. The spokesperson implies that it is so important for him to prioritise his gambling above all else that he must be able to place bets when his focus should arguably be elsewhere (taking time out to have a massage, listening to someone



giving him a golf lesson, grooming his dog). When gambling prevents one from maintaining normal life this is surely a definition of problem gambling! This normalises this harmful behaviour and promotes it.

The gambling adds are on way too frequently during a family time slot when children are likely to be watching. I find some of the Shaquille O'Neil adds sexist, e.g. he ignores the advice from the lady during the golf add and he dismisses the three ladies when they tell him 'Philosophiser is not a word'. It feeds into the stereotype that men are the dominant sex and ignore and dismiss women.

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 on 29 October 2021 and 2 November 2021 respectively to PointsBet Australia Pty Limited ("PointsBet", "we", "us" or "our") concerning a series of our television commercials featuring the prominent American sports figure Shaquille O'Neal (the "Ads"). Shaquille O'Neal is hereafter referred to as "Shaq".

The letters detail two complaints made by members of the public in relation to our Ads. We thank you for bringing these complaints to our attention. For the reasons set out below, we are of the view that the Ads are wholly compliant with all applicable codes and legislative or regulatory regimes. Accordingly, we respectfully submit that both complaints made in relation to our Ads be dismissed. Notwithstanding, we have taken the notification of these complaints as an opportunity to reflect on the Ads in light of the views expressed by the concerned the community members and will consider any implications for our future advertising.

The Ads

Neither complaint identifies which of our Ads has specifically caused the concern. For this reason, we refer to all the Ads which make up the PointsBet brand campaign featuring Shaq. The campaign comprises a series of television commercials each of which is whimsical in tone and features our main protagonist, Shaq, using the PointsBet app to easily place a bet without it getting in the way of his daily life. The scenarios depicted are a fanciful take on real life activities one might undertake, and they include scenarios in which Shaq is:

- playing golf;*
- grooming his dog in preparation for a dog show;*
- performing maintenance on a vehicle in his garage;*
- receiving a massage in a professional massage studio; and*
- painting in his spare time.*

In addition to the individual Ads featuring only one of these scenarios, there is a 'sliced' version which depicts Shaq moving through each of the activities in quick



succession. The central theme is that a person, in this case Shaq, can use the PointsBet app to bet without it causing significant disruption to that person's daily life and commitments. The Ads are intended to be a fun, light-hearted play on the fact that the development of technology means it is no longer necessary to take time out of one's day to visit a physical shop front or go to the track to place a bet. They do not portray, nor are they intended to condone or encourage excessive participation in wagering. In fact, the Ads do just the opposite; they portray quick and easy betting activity that has not caused any significant or meaningful disruption to the activities that Shaq is otherwise undertaking.

Response to the first complaint

The reason provided for the complaint outlined in the first letter dated 29 October 2021 is as follows:

"I am concerned that this series of advertisements glorify and make light of problem gambling. The spokesperson implies that it is so important for him to prioritise his gambling above all else that he must be able to place bets when his focus should arguably be elsewhere (taking time out to have a massage, listening to someone giving him a golf lesson, grooming his dog). When gambling prevents one from maintaining normal life this is surely a definition of problem gambling! This normalises this harmful behaviour and promotes it."

Before addressing the substance of this complaint, it is worth noting that we reject any assertion that the Ads in any way "glorify" or "make light" of problem gambling behaviours. PointsBet is committed to the responsible service of our online gambling product, and we take our obligations seriously in that regard. We do not encourage or condone persons with problem gambling behaviours participating in gambling, nor would we seek to portray those behaviours in our brand advertising. We also offer resources (on our website) to help those of our clients who may want to take steps to control their gambling, for example by offering deposit limits and 'take a break' options.

That matter aside, the complaint relates to the AANA Wagering Advertising Code (the "Wagering Code"), specifically section 2.8 which provides that:

"Advertising or Marketing Communication for a Wagering Product or Service must not portray, condone or encourage excessive participation in wagering activities."

We respectfully disagree with the community member's assertions that the Ads depict Shaq prioritising "his gambling above all else" and that the gambling depicted is preventing him "from maintaining normal life". The Ads in actuality do quite the opposite. Each Ad is a satirised depiction Shaq going about his 'normal' life and being able to quickly place a bet without materially impacting on the activity he is undertaking or disrupting those around him. We submit that in the overall context of each Ad, Shaq either stopping momentarily what he is doing to place a bet or placing the bet while undertaking the activity does not constitute excessive participation in



wagering activities nor does it expressly or impliedly suggest wagering is disrupting the activity.

The Ads are nothing more than a humorous play on the common act of multitasking which has been made easier by the invention of smart phones such that a person can now place a bet on a mobile phone app; unlike bygone times where a person wanting to place a bet had to take a large chunk of time out of their day to do so by attending a physical place that facilitates betting activity. For the avoidance of doubt, betting is a perfect legal activity in Australia which is participated in responsibly by many, and the depiction in our Ads of Shaq placing bets while engaged in other pursuits does not in and of itself equate to a portrayal of excessive gambling.

In relation to the spliced Ad specifically, PointsBet respectfully submits that the commentary immediately above also applies. While that Ad features Shaq placing multiple bets, it does so by depicting each of the scenarios as a separate and distinct humour. The reasonable viewer watching that Ad would not believe that Shaq is placing those multiple bets in the short period of time depicted. Nor would the reasonable viewer form an opinion that the Ad is encouraging or condoning others to place multiple bets in quick succession. Rather, in overall context of Ad and the campaign generally, viewers would understand that each scenario occurs at a different place and time to the last (e.g. there has been a clear passing of time) and that no disruption has been caused to Shaq's life, including to his family, friends or professional or educational commitments by placing the bets.

For these reasons we submit that the complaint has no grounds to be upheld under the Wagering Code and that it should be dismissed accordingly.

Response to the second complaint

The reason provided for the complaint outlined in the second letter dated 2 November 2021 is as follows:

"The gambling adds (sic) are on way too frequently during a family time slot when children are likely to be watching. I find some of the Shaquille O'Neil (sic) adds (sic) sexist, e.g. he ignores the advice from the lady during the golf add and he dismisses the three ladies when they tell him 'Philosophiser is not a word'. It feeds into the stereotype that men are the dominant sex and ignore and dismiss women."

Before addressing the substance of the complaint, we would highlight that PointsBet is committed to responsible advertising practices and has a history of compliance with the Wagering Code and all other applicable AANA codes. PointsBet places its advertisements in appropriate adult time slots and, the content of our advertisements (including the Ads) is always directed at those persons who are 18+ and legally able to participate in online wagering activities in Australia.

That matter aside, the complaint relates specifically to section 2.8 of the Wagering Code (extracted in the section above entitled 'Response to the first complaint'). The commentary in that section as regards our Ads not contravening section 2.8 of the



Wagering Code applies equally to this second complaint. We respectfully ask that those comments be read as though they are made in relation to both complaints.

In addition, this second complaint also relates to the AANA Code of Ethics (the "Code"), specifically section 2.1 which provides 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."

It appears that this part of the second complaint relates to two of our Ads, namely (1) the Ad depicting Shaq receiving a golfing lesson from Paige Renee Spiranac who plays his golfing instructor, and (2) the Ad depicting Shaq receiving a massage from three characters playing masseurs in a professional setting. The community member making the complaint claims the two Ads in question are "sexist" and that they perpetuate "the stereotype that men are the dominant sex and ignore and dismiss women".

With respect for the view of that community member, PointsBet could not disagree more strongly. The term 'sexist' is commonly understood in Australia (the audience of our Ads) to relate to the discrimination and/or devaluation of a person (often a woman) based on that person's sex or gender. The term is also commonly understood to refer to a person who has a deep-rooted prejudice, or who hates or distrusts women. Without any doubt, at no stage do our Ads or our main protagonist, Shaq, expressly or impliedly display or exhibit sexist attitudes or behaviours. Rather:

- The Ad depicting the golfing scenario: The woman depicted in this Ad is Paige Renee Spiranac who is an American social media personality and a retired professional golfer. Paige is also an employee and brand ambassador for PointsBet in Australia and the United States. The Ad plays out a scene in which Paige is instructing Shaq on his golfing technique. Paige is portrayed in a powerful position and can be heard giving Shaq tips on his best 'bet' for improving his golf swing (a clever play on words); Paige specifically suggest that Shaq stand with his "feet shoulder width apart". It is commonly understood by golfers that such a stance will result in a better swing. While Shaq pauses mid-way through the instruction to place a bet, we respectfully submit that no reasonable person would consider this act, in context of the advertisement, a 'sexist' act and Shaq does not do or say anything else during that Ad that could reasonably be inferred as sexist. In keeping with the fanciful theme of our Ad campaign, Shaq is depicted going through a perfect swing one handed after taking Paige's advice. We also note that Paige is always depicted during the Ad in a manner that is consistent with her brand and image which can be evidenced via her Instagram account (@_paige.renee). For these reasons we respectfully submit that the Ad does not discriminate against or vilify Paige (or any other woman) for her gender, that Paige's instruction is listened to by Shaq and that the claims by the community member in relation to perpetuating stereotypes are plainly wrong.*



- *The Ad depicting the massage scenario: The women characters depicted in this Ad play three masseurs. The fact there are three masseurs present for the massage scene is a light-hearted and humorous play on the fact that Shaq is known to be 'big' when compared to the average sized person. Shaq even refers to this himself in the script for the Ad. As the scene plays out, Shaq can clearly be seen treating the masseurs with respect, including by thanking the masseurs for his massage and exclaiming how "good" he feels for having received it. While not necessarily appearing enthusiastic, the masseurs are neither expressly or impliedly depicted feeling uncomfortable, ignored, or dismissed by Shaq. In fact, the overriding emotion is one of surprise as the sheer size of Shaq becomes apparent when he stands up from the massage table. At that point in the Ad, Shaq is questioned by one of the masseurs about the name on his shorts (a pair of boxing trunks) – 'The Big Aristotle'. Shaq explains that the meaning of the words is derived from the fact that he is "big" and a "philosophiser". That statement is followed by friendly (and softly spoken) short discussion about whether 'philosophiser' is a word. While 'philosophiser' is indeed a word and Shaq does correct the masseur that claims it not to be a word, he does so in a tone of voice that could not reasonably be interpreted as humiliating, ridiculing, or intimidating to that masseur. Put simply, the act of correcting a person's erroneous opinion, in the context of this Ad, does not meet any realistic threshold for being considered discrimination or vilification. Further, nothing said or done by Shaq during the Ad could be reasonably viewed as portraying or depicting the unfair or less favourable treatment of the women characters or women more generally.*

For the reasons set out above we submit there is no grounds to the complaint about the Ads in relation to section 2.1 of the Code and ask that the complaint be dismissed accordingly.

General assessment against the Wagering Code

In addition to the specific responses to each complaint provided above, we have assessed all our 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 both 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

Having regard to the overall context of our Ads including the placement, overriding theme, visuals and language used, PointsBet believes they are not directed primarily (or at all) to minors.

Section 2.2 – No depiction of minors

Our Ads do not feature minors.

Section 2.3 – No depiction of young people wagering



Our Ads do not depict persons aged 18-24 years old engaged in wagering activities. Our main protagonist, Shaq, is depicted gambling and he is aged 49 at the time of this letter.

Section 2.4 – No alcohol

Our 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 depicted, it is only the act of placing a bet (and not the outcome) that is in focus. The Ads merely imply that it is easy to bet with PointsBet, which is an accurate implication.

Section 2.6 – No relief from difficulty

Our Ads are whimsical and light-hearted. 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 our Ads and the scenarios depicted, we believe they do not state or imply any link between wagering and a person's sexual success or enhanced attractiveness. The interactions of our main protagonist with other characters in the Ads are generally not directly related to his wagering activity.

Section 2.8 – No depiction of excessive participation in wagering

For the reasons explained above in the section entitled 'Response to the first complaint' we are firmly of the view that our Ads do not portray, condone or encourage excessive participation in wagering activities.

Section 2.9 – No peer pressure

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

General assessment against the Code

In addition to the specific response concerning section 2.1 of the Code provided above at the section 'Response to second complaint', we have assessed our Ads against all sections of the Code. As a result of that review, we remain firmly of the view that the Ads are wholly compliant with the Code and that both complaints should be dismissed.

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

Section 2.1 – No discrimination or vilification

For the reasons explained above in the section entitled 'Response to the second complaint' we are firmly of the view that our 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

Our Ads do not employ sexual appeal where minors, or people who appear to be minors are used (there are no minors in our Ads). Having regard to the overall context of our Ads and the scenarios depicted, we believe 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

Our Ads do not present or portray violence or any violent scene.

Section 2.4 – Treatment of sex, sexuality and nudity

Our 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

Having regard to the overall context of our Ads and the scenarios depicted, we believe that appropriate language is always used. The Ads do not feature any strong or obscene language.

Section 2.6 – Community Standards

Having regard to the overall context of our Ads and the scenarios depicted, we believe that no material which is contrary to prevailing community standards on health and safety has been depicted. Dealing specifically with the Ad which features a golfing scene, our main protagonist is depicted hitting a perfect swing with the ball travelling so far that it unexpectedly lands close to a separate group of golfers. This is a common occurrence while playing golf. In keeping with good golfing practice and the prevailing community standard, our golfing instructor can clearly be heard yelling “four”, the commonly understood term which is used to warn other golfers that an errant ball is heading their way. Accordingly, we strongly submit that portrayal is not contrary to prevailing community standards relating to safe conduct of golf as a pursuit.

Section 2.7 – Clearly advertising

Our Ads are clearly understandable as advertising for the PointsBet brand and our wagering product.

THE DETERMINATION

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

The Panel noted the complainants’ concern that the advertisement:



- Depicts excess participation in wagering activities
- Is sexist due to the treatment of women in the golf ad and massage ad.

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."

The Panel noted a complainant's concern about the frequency of wagering advertising and its placement during times when children may be watching. The Panel noted that it generally has no jurisdiction over the placement or timing of wagering advertisements or whether an advertisement for a wagering product or service can be seen by children. The Panel noted that wagering advertising is legally allowed to be broadcast and it can only consider issues within the codes administered by Ad Standards. The Panel noted that the Wagering Code does not allow for advertisements targeted towards children however considered that the complainants concern appeared to relate solely to the placement of advertisements rather than a concern that the content of the advertisement was targeted at children.

Wagering Code Section 2.8 - Advertising or Marketing Communication for a Wagering Product or Service must not portray, condone or encourage excessive participation in wagering activities.

The Panel considered whether the advertisement portrayed 'excessive' participation in wagering activities.

The Panel noted the Practice Note to Section 2.8 of the Wagering Code which provides:

"Simply depicting regular wagering, for example as a routine weekend pursuit during a sporting season, does not equate to portraying excessive participation. An advertisement or marketing communication would portray, condone or encourage excessive participation in wagering activities where it depicts:

- *participants wagering beyond their means;*
- *wagering taking priority in a participant's life;*
- *prolonged and frequent wagering to improve a participant's skill in wagering."*



The Panel noted a complainant's comments that the advertisement suggests that it is so important to the man to prioritise wagering that he must be able to place bets when his attention should be elsewhere, such as the task at hand (golf lesson, car maintenance etc) and that wagering is preventing him from maintaining a normal life.

The Panel noted it had previously upheld complaints about excessive participation in wagering activities in cases 0447/16, 0459/17 and 0492/17 where wagering appeared to take priority in a participant's life or participants went beyond ordinary or proper limits.

In contrast, in the current case, the Panel considered that the intent of the advertisement is to highlight how quick and easy it is to place a bet and that such a task will not interrupt daily activities. The Panel further noted that the activities Mr O'Neal is engaged in are leisure activities rather than important life tasks. He is not depicted child-minding, cooking or working for example.

The Panel considered that overall the advertisement does not convey the message that wagering is taking priority in the man's life.

The Panel considered that the advertisement was not condoning or encouraging excessive participation and in the Panel's view the message taken from the promotion is not a portrayal of or encouragement for, excessive participation in wagering activities.

Wagering Code Section 2.8 Conclusion

The Panel determined that the advertisement does not portray, condone or encourage excessive participation in wagering activities and does not breach Section 2.8 of the Wagering Code.

Code of Ethics Section 2.1: Advertising or Marketing Communication 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 preference, 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
Gender - male, female or trans-gender characteristics.

Does the advertisement portray material in a way which discriminates against or vilifies a person on account of gender?

Golf Lesson advertisement

The Panel noted a complainant's concern that the advertisement shows Mr O'Neal being dismissive towards the woman is ignoring her advice.



The Panel noted that the woman in the advertisement is Paige Spiranac, a retired professional golfer who is giving Mr O'Neal a golf lesson. The Panel considered that Mr O'Neal respectfully complies with her advice and follows her instruction. The Panel considered that showing him placing a bet while following her instruction did not amount to him ignoring or dismissing her experience or input.

The Panel considered that the treatment of Ms Spiranac in this advertisement was not discriminatory or vilifying towards her or women in general.

Massage advertisement

The Panel noted a complainant's concern that the advertisement shows Mr O'Neal being dismissive towards the women in the advertisement when they tell him that "philosophiser" is not a word.

The Panel noted that Mr O'Neal comments that he is a philosophiser, to which the older woman in the advertisement tells her colleagues that it is not a word. Mr O'Neal replies "yes it is".

The Panel noted the "philosophiser" is a word, meaning someone who considers situations from a philosophical point of view, different to "philosopher" which most commonly means a student of or specialist in philosophy.

The Panel considered that Mr O'Neal disagreeing with the woman does not itself amount to discriminatory or vilifying behaviour, and considered that there is no indication that his comment is due to her gender rather than a correction of fact.

The Panel considered that Mr O'Neal is shown to be respectful to the women at the conclusion of his massage by thanking them and conversing with them.

The Panel considered that the treatment of the three women in this advertisement was not discriminatory or vilifying towards them or women in general.

Car Maintenance advertisement

The Panel considered whether the use of the phrase "she's going to purr like a kitten" to refer to the car is discriminatory or vilifying towards women.

The Panel noted that referring to vehicles as "she" is quite common and noted that most boats also have female monikers. The Panel considered that the action of using masculine or feminine terms to describe inanimate objects personifies the object and suggests strong emotional involvement, especially when calling an object "it" seems too cold. The Panel considered that the reference in this context was not discriminatory or vilifying towards women.



Overall the Panel considered that the content of the advertisement did not show the women to receive unfair or less favourable treatment because of their gender, and did not humiliate, intimidate or incite hatred, contempt or ridicule of the women because of their gender.

Code of Ethics 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 gender, the Panel determined that the advertisement did not breach Section 2.1 of the Code.

Code of Ethics Section 2.2: Advertising or marketing communications should not employ sexual appeal in a manner which is exploitative or degrading of any individual or group of people.

The Panel noted the AANA Practice Note which provides guidance on the meaning of the terms exploitative and degrading:

Exploitative - (a) taking advantage of the sexual appeal of a person, or group of people, by depicting them as objects or commodities; or (b) focussing on their body parts where this bears no direct relevance to the product or service being advertised. Degrading – lowering in character or quality a person or group of people.

Golf Lesson advertisement

The Panel considered whether the depiction of the woman giving a golf lesson is objectifying of her.

Does the advertisement use sexual appeal?

The Panel noted that Paige Spiranac is a retired professional golfer who is giving Mr O'Neal a golf lesson. The Panel considered that she is wearing a long sleeve red shirt and a mid-thigh length black skirt. The Panel considered that some members of the community may consider the advertisement to contain sexual appeal.

Does the advertisement use sexual appeal in a manner that is exploitative?

The Panel noted that the advertisement was in the context of a golf lesson. The Panel noted that the clothing worn by Ms Spiranac is consistent with other professional female golfers. The Panel considered that while her skirt was mid-thigh length, there was no particular focus on her body parts and no suggestion that she was an object or commodity. She is clearly depicted in a professional sense and is not used as decoration in the advertisement. The Panel considered that the advertisement did not employ sexual appeal in a manner which is exploitative of women.

Does the advertisement use sexual appeal in a manner that is degrading?



The Panel considered that the depiction of the women was relevant to setting of a golf lesson and she was depicted as an expert professional. The Panel considered that the advertisement did not employ sexual appeal in a manner which is degrading to women.

Massage advertisement

The Panel considered whether the depiction of a partially dressed man is exploitative or degrading.

Does the advertisement use sexual appeal?

The Panel considered that the depiction of a partially dressed man is one which is likely to be considered to contain sexual appeal.

Does the advertisement use sexual appeal in a manner that is exploitative?

The Panel noted that the advertisement was in the context of a massage and considered that the clothing worn by Mr O'Neal is not inappropriate for such an activity. The Panel noted a brief close up scene of his lower body, but considered that this focus was on the name embroidered on his shorts (The Big Aristotle) rather than a focus on his body parts.

The Panel considered that he is shown interacting with the women in the advertisement and considered that there is no suggestion that he is an object or commodity. The Panel considered that the advertisement did not employ sexual appeal in a manner which is exploitative of the man or men in general.

Does the advertisement use sexual appeal in a manner that is degrading?

The Panel considered that the depiction of the man was respectful and there was no suggestion that he was inferior or less than. The Panel considered that he was not lowered in character or quality and considered that the advertisement did not employ sexual appeal in a manner which is degrading to the man or men in general.

Code of Ethics Section 2.2 conclusion

The Panel determined that the advertisement did not breach Section 2.2 of the Code.

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

Dog Show advertisement

The Panel considered whether the dog in the advertisement was depicted in a manner indicating it was unhealthy or abused.



The Panel noted that some viewers may disagree with the concept of dog shows, however depicting a dog in such an environment is not itself a suggestion of animal cruelty.

The Panel noted that the dog does appear slim, however considered that a slender build is typical of the Afghan Hound breed and there is no suggestion that the dog is malnourished or is being mistreated

The Panel considered that the advertisement did not depict violence towards animals.

Code of Ethics Section 2.3 conclusion

The Panel determined that the advertisement did not breach Section 2.3 of the Code.

Code of Ethics Section 2.4: Advertising shall treat sex, sexuality and nudity with sensitivity to the relevant audience.

Massage advertisement

The Panel considered whether the depiction of Mr O'Neal dropping his towel is suggestive of sexual impropriety/nudity which is inappropriate for a broad audience

Does the advertisement contain sex?

The Panel considered whether the advertisement contained sex. The Panel noted the definition of sex in the Practice Note is "sexual intercourse; person or persons engaged in sexually stimulating behaviour".

The Panel noted that the advertisement is promoting adult products intended for sexual activity however considered that there is no depiction of such activity.

The Panel considered that the advertisement did not contain sex.

Does the advertisement contain sexuality?

The Panel noted the definition of sexuality in the Practice Note is "the capacity to experience and express sexual desire; the recognition or emphasis of sexual matters".

The Panel noted a scene in which Mr O'Neal stands up after a massage and there is a fleeting moment where some viewers may have the impression that he is exposing himself to the women. The Panel considered that although this scene is quickly resolved and it's clear he is not naked, some viewers may think the slight possibility he is exposing himself to the women is a fleeting moment of sexuality.

The Panel considered that the advertisement did contain sexuality.

Does the advertisement contain nudity?



The Panel noted that the definition of nudity in the Practice Note is “the depiction of a person without clothing or covering; partial or suggested nudity may also be considered nudity”.

The Panel noted that the Mr O’Neal is only wearing shorts and considered that the advertisement did contain partial nudity.

Are the issues of sexuality and nudity treated with sensitivity to the relevant audience?

The Panel noted that the definition of sensitivity in the Practice Note is “understanding and awareness to the needs and emotions of others”. The Panel considered that the requirement to consider whether sexual suggestion is ‘sensitive to the relevant audience’ requires them to consider who the relevant audience is and to have an understanding of how they might react to or feel about the advertisement.

The Panel considered that while the advertisement shows a close up of a man wearing shorts, the shorts are loose and his genitals are fully covered. The Panel considered that it is quickly made clear that the man is not naked and that he is not exposing himself to the women.

The Panel considered that the sexuality and nudity in the advertisement was mild and was not inappropriate for a television audience.

Code of Ethics Section 2.4 conclusion

The Panel determined that the advertisement did not breach Section 2.4 of the Code.

Code of Ethics 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 the language used in all versions of the advertisement, “it’s shaq-ing easy”, and concerns around the similarity to an obscenity.

The Panel considered that the voiceover clearly says “shaq-ing” and that there is a clear link to the basketball player, Shaquille O’Neal. The Panel considered that even Australians who are uninterested in American basketball are likely to understand the reference and recognise the man.

The Panel considered that the language used was not inappropriate in the circumstances.

Code of Ethics Section 2.5 conclusion

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



Code of Ethics Section 2.6: Advertising shall not depict material contrary to Prevailing Community Standards on health and safety.

Car Maintenance advertisement

The Panel considered whether starting a vehicle while a person is under it is unsafe.

The Panel noted that the vehicle is up on blocks and the wheels are not touching the ground or the blocks. The Panel considered this scenario is not uncommon in garage/mechanic settings. The Panel considered that most members of the community would not find this depiction to be unsafe.

Code of Ethics Section 2.6 conclusion

The Panel determined that the advertisement did not breach Section 2.6 of the Code.

Conclusion

Finding that the advertisement did not breach the Wagering Code or the Code of Ethics on other grounds, the Panel dismissed the complaints.