



# Case Report

<b>1</b>	<b>Case Number</b>	<b>0370/16</b>
<b>2</b>	<b>Advertiser</b>	<b>Ladbroke.com.au</b>
<b>3</b>	<b>Product</b>	<b>Gaming</b>
<b>4</b>	<b>Type of Advertisement / media</b>	<b>TV - Free to air</b>
<b>5</b>	<b>Date of Determination</b>	<b>14/09/2016</b>
<b>6</b>	<b>DETERMINATION</b>	<b>Dismissed</b>

## ISSUES RAISED

- 2.4 - Alcohol consumption Depicting with placement of wager
- 2.5 - Promise of winning State or imply a promise of winning

## DESCRIPTION OF THE ADVERTISEMENT

This television advertisement contains a sophisticated montage of athletes preparing, training and competing in racing and sporting events. We also see supporters passionately spectating and cheering on the athletes. There is a single frame of a person placing a bet using the Ladbrokes mobile App. The Ad concludes with “Ladbrokes. Up for the Challenge. Since 1886” on screen.

The text, “Is gambling a problem for you? Call Gambling Help on 1800 858 858 or visit [gamblinghelponline.org.au](http://gamblinghelponline.org.au)” also appears on screen during the Ad.

## THE COMPLAINT

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

*The spitting of what is implied to be an alcohol beverage breaches section 2.4 of the wagering advertising and marketing communications code that came into effect on 1 July. There may be a case for 2.5 being breached or some other code.*

## THE ADVERTISER’S RESPONSE

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

*At the outset and with respect to the views of the community member, it will be useful to correct some incorrect assertions made by the community member:*

*Incorrect assertion made by community member - "There was an elderly man with alcohol spitting from his mouth".*

*Correct position - The Ad contains close-up footage of an impassioned man's mouth whilst cheering, with some saliva being sprayed from his mouth ("Cheering Footage"). The Cheering Footage is on screen for around one second. Neither the Cheering Footage nor the other footage in the Ad depicts alcohol, people consuming alcohol or people acting under the influence of alcohol. Therefore, the Cheering Footage does not depict a "man with alcohol" and it does not contain footage of a "man spitting alcohol from his mouth".*

*Incorrect assertion made by community member - The man is in "a public venue with a liquor licence".*

*Correct position - It is unclear where the man is physically located. The man is in focus, and the background is blurred or out of focus. Furthermore, as neither the Cheering Footage nor the other footage in the Ad depicts alcohol, people consuming alcohol or people acting under the influence of alcohol. Therefore, it is not possible to draw a logical conclusion that the venue holds a liquor licence (impliedly or otherwise).*

*Incorrect assertion made by community member - "The voice over seemed to imply that the statistical odds, randomness and chance that is involved when placing live betting can somehow be "overcome" by intellect or by utilising the product "Ladbrokes"."*

*Correct position - The voice over does not imply that the risk involved with betting can be overcome by intellect or by placing bets with Ladbrokes. Instead, the voice over contains a series of statements and questions which positions the audience member viewing the Ad to consider whether they are willing to back themselves. At no point does the voice over make any representations or guarantees that there is a promise of winning when a customer uses intellect or places a bet with Ladbrokes.*

## *Section 2 of the Wagering Code*

*As we are an online and telephone wagering business licensed and regulated in Australia, the Wagering Code is applicable to our Ad. Although, for the reasons mentioned above and below, we do not believe our Ad contravenes the Wagering Code.*

### *2.1 – Directed to Minors*

*We believe that our Ad, having regard to the theme, visuals and language used, is not directed to persons under the age of 18 years of age.*

### *2.2 – Depiction of Minors*

*We believe that our Ad does not depict a person under the age of 18 years of age in an incidental role or at all.*

### *2.3 – Depiction of 18-24 year olds wagering*

*We believe that our Ad does not depict a person aged 18-24 years old engaged in wagering activities.*

### *2.4 – Wagering in combination with the consumption of alcohol*

*We believe that our Ad does not portray, condone or encourage wagering in combination with the consumption of alcohol.*

*As stated above, the Ad does not contain any footage of alcohol, people consuming alcohol or people acting under the influence of alcohol. In fact, there are not any alcoholic or non-alcoholic beverages shown in the Ad. Contrary to the community member's belief, the man depicted in the Cheering Footage is not spitting alcohol from his mouth. Instead, there is saliva sprayed from his mouth whilst he is cheering.*

*The community member has made a further assertion that the man in the Cheering Footage is in "a public venue with a liquor licence". As discussed above, that assertion is not correct. In any event, if the man happened to be cheering in a venue with a liquor licence, then we would contend that our Ad still does not portray, condone or encourage wagering in combination with the consumption of alcohol and does not breach Clause 2.4 of the Wagering Code. The Practice Note to the Wagering Code states "advertising or marketing depicting the consumption of alcohol at a venue where wagering may take place (e.g. an advertisement for the Melbourne Cup portraying attendees drinking champagne while watching a race)" would not breach Clause 2.4 of the Wagering Code.*

*Finally, our Ad does not indicate that the man in the Cheering Footage is wagering. He is simply passionately cheering for a racing or sporting event.*

### *2.5 – Stated or implied promise of winning*

*We are mindful that we operate in a sector where there are vulnerable consumers who may be experiencing problem gambling. As such, we take our responsible gambling and other harm minimisation obligations seriously. For that reason, we insist that our Ad does not state or imply a promise of winning.*

*As stated above, at no point does the voice over in our Ad make any representations or guarantees or imply that there is a promise of winning when a customer uses intellect or places a bet with Ladbrokes. Instead, the voice over contains a series of statements and questions which positions the audience member viewing the Ad to consider whether they are willing to back themselves.*

*The footage and voice over in our Ad does not allude that winning is a definite outcome of placing a bet. On the contrary, the voice over explicitly states:*

*"A stroke of luck"*

*"A throw of the dice"*

*"The toss of the coin"*

*"Predicting the unpredictable"*

*2.6 – Means of relieving a person’s financial or personal difficulties*

*We believe that our Ad does not portray, condone or encourage participation in wagering activities as a means of relieving a person’s financial or personal difficulties.*

*2.7 – Sexual success and enhanced attractiveness*

*We believe that our Ad does not state or imply a link between wagering and sexual success or enhanced attractiveness.*

*2.8 – Excessive participation in wagering activities*

*We believe that our Ad does not portray, condone or encourage excessive participation in wagering activities.*

*2.9 – Peer pressure to wager or abstention from wagering*

*We believe that our Ad neither portrays, condones or encourages peer pressure to wager nor disparages abstention from wagering activities.*

*Section 2 of the AANA Code of Ethics*

*For the reasons mentioned above and below, we do not believe our Ad contravenes the AANA Code of Ethics.*

*2.1 – Discrimination*

*We believe that our Ad does not discriminate against or vilify a person or section of the community on account of race, ethnicity, nationality, gender, age, sexual preference, religion, disability, mental illness or political belief.*

*2.2 - Exploitative and degrading*

*We believe that our Ad does not employ sexual appeal in a manner which is exploitative or degrading or any individual or group of people.*

*2.3 – Violence*

*We believe that our Ad does not present or portray violence.*

*2.4 – Sex, sexuality and nudity*

*We believe that our Ad does not treat sex, sexuality or nudity with insensitivity to the relevant audience.*

*2.5 – Language*

*We believe that our Ad uses language which is appropriate in the circumstances, and is not strong or obscene.*

## *2.6 - Health and Safety*

*We believe that the Ad does not depict material contrary to prevailing community standards on health and safety.*

### *AANA Code for Advertising and Marketing Communications to Children*

*We do not consider that the AANA Code for Advertising and Marketing Communications to Children applies as the Ad is not, having regard to the theme, visuals and language used, directed primarily to children or for product which is targeted toward or having principal appeal to children.*

### *AANA Food and Beverages Marketing and Communications Code*

*We do not consider that the AANA Food and Beverages Marketing and Communications Code apply as the Ad does not advertise food or beverage products.*

*We sincerely hope that the clarification provided here resolves the concerns of both the ASB and the community member.*

## **THE DETERMINATION**

The Advertising Standards Board (“Board”) considered whether this advertisement breaches the AANA Wagering Advertising and Marketing Communication Code (‘Wagering Code’).

The Board noted the complainant’s concern that the advertisement depicts a man spitting alcohol and that it infers that you can’t lose.

The Board viewed the advertisement and noted the advertiser’s response.

The Board 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 Wagering Code Practice Note:

“The Code applies to advertising and marketing communication for wagering products and services provided by licensed operators in Australia. Wagering Product or Service relates to betting on horse races, harness races, greyhound races, or sporting events including electronic sports (competitive video gaming), as well as betting on a series of races or events. It also includes betting on an event, or a series of events, such as novelty events or other contingencies, for example royal baby names or award winners. In addition it includes betting on fantasy sport teams.”

The Board noted Section 2.4 of the Wagering Code which provides: “Advertising or Marketing Communications for a Wagering Product or Service must not portray, condone or

encourage wagering in combination with the consumption of alcohol.”

The Board noted that this television advertisement features a montage of athletes preparing to compete in various racing and sporting events along with images of spectators cheering them on.

The Board noted the complainant’s concern that in one scene we see a man with alcohol spitting from his mouth. The Board noted the advertiser’s response that there is no depiction of any alcohol products in the advertisement: either in a background shot, or being consumed. The Board considered that there is no image of any alcohol being consumed in the advertisement and considered that the scene showing the man with saliva spraying from his mouth is suggestive of the man passionately cheering rather than spitting alcohol.

The Board considered that the advertisement did not depict alcohol and determined that the advertisement did not breach Section 2.4 of the Wagering Code.

The Board noted Section 2.5 of the Wagering Code which provides: “Advertising or Marketing Communication for a Wagering Product or Service must not state or imply a promise of winning.”

The Board noted the complainant’s concern that the advertisement suggests that intellect can overcome statistical odds and therefore it’s possible to win if you are clever or use the advertiser’s product.

The Board noted that the voiceover in the advertisement asks if you are up for challenge and considered that the comment that you should ‘back yourself’ whether you are ‘right or wrong’ is suggestive of taking a chance rather than always winning.

The Board considered that the advertisement does not imply that intellect or Ladbrokes will ensure you that you win, or make any other claims about winning, and determined that the advertisement did not breach Section 2.5 of the Wagering Code.

Finding that the advertisement did not breach the Wagering Code on other grounds, the Board dismissed the complaint