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Case Report

1	Case Number	0376/13
2	Advertiser	Victorian Responsible Gambling Foundation
3	Product	Community Awareness
4	Type of Advertisement / media	TV
5	Date of Determination	13/11/2013
6	DETERMINATION	Upheld - Not Modified or Discontinued
7	Date of reviewed determination	12/02/2014
8	Determination on review	Upheld - Modified or Discontinued

ISSUES RAISED

2.6 - Health and Safety Depiction of smoking/drinking/gambling

DESCRIPTION OF THE ADVERTISEMENT

The advertisement opens with a 12 year old boy introducing the concept of a betting agency called 'KidBet'. The advertisement is then interrupted by the appearance of a prominent statistic that highlights the risks to young people of over exposure to sports betting messages. The sports betting parodies continue and are again interrupted on two further occasions with youth related gambling prevalence statistics. The advertisement concludes with a close up of the 12 year old saying 'So get your bets in and start winning. Coz that's what it's all about...right?'. A sombre look comes over his face before it cuts to a screen showing the call to action whilst an adult male voiceover states 'Kids and betting. They should never go together. Protect kids from the risks of gambling. Find out how at kidbet.com.au'. Throughout the advertisement a disclaimer stating that this is 'Not a real betting agency' is visible in the bottom right hand corner each time the KidBet logo appears prominently on screen.

THE COMPLAINT

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

This ad may work as a parody when viewed by adults. When being viewed by children it has the exact opposite effect. My children do not understand the subtleties of sarcasm and parody.

They watch this ad and see their peers telling them how much better gambling makes sport! Moreso they will not listen the an adult male voice-over in the last few seconds of the ad after they have just had 20 odd seconds of kids talking to the camera and betting on ipads and endorsing gambling on sport.

I believe that this ad is very influential on children in the opposite way the ad was intended. It's advertised by a child about children betting on an ipad on a sports betting site. The child talks about betting on the footy. The fact that its a child talking makes it exciting for other children watching (kids teaching kids). The only way to recognise that it's a "fake" betting site is by the fine print that flashes up -(which is not obvious to children watching). We are not a gambling family and have never had a concern for our children taking up gambling until we saw this add - my 5 year old is glued to it. Its exciting for him to see another child on an ipad talking about betting on football with his mates and my son is asking if he can too - I was outraged by his instant reaction (we have seen the add twice so far). I am anti-gambling especially for kids, and whilst I agree with the concept to be aimed at adults to not encourage their kids to gamble, the irony in using a child in the add is lost in fact that it actually appeals to children - it is an extremely poor choice of medium that is backfiring in its messaging. I really think this ad is more noticed by children than adults and is having the opposite effect to the original intent; you need to get this off the air or limit it to after 10:00pm where it no longer poses a risk to influential young children.

THE ADVERTISER'S RESPONSE

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

Thank you for notifying the Victorian Responsible Gambling Foundation (Foundation) of the complaints received by the Advertising Standards Bureau in relation to the responsible gambling 'KidBet' television commercial.

The Foundation has reviewed Section 2 of 'AANA Code of Ethics' and provides the following response to address all concerns outlined in your letter.

Foundation objectives

The Foundation was established to reduce the prevalence of problem gambling, the severity of harm related to gambling and to foster responsible gambling. The Foundation sees problem gambling as a public health issue that also has social and economic impacts on society. Just as problem gambling impacts on the whole community, we need a whole-of-community approach to overcome it. Our approach is about prevention as well as treatment. We provide a wide range of free services to people affected by gambling, deliver community education campaigns to raise awareness of the risks of gambling, foster responsible gambling and ensure people know what services are available and where they can get help. We work with researchers, health professionals, the gaming industry, government, community and sporting organisations to anticipate, minimise, and where possible, prevent gambling-related harm.

The Foundation sought legal advice that confirmed the campaign advertisement is not restricted by the Gambling Regulation Act 2003. Legal advice was also sought in relation to the creative concept and approach which confirmed that there were no grounds (based on this advice) for any trademark, liable or defamation cases against the Foundation.

Research and testing

Issues surrounding gambling continue to attract significant media attention in Victoria and

across the country. The recent federal inquiry into gambling advertising and sports, emphasised community concern over the proliferation and accessibility of gambling and its effects on culture and behaviour. In particular, community concern has grown about how gambling and sports betting advertising is negatively impacting children (Productivity Commission 2010).

Young people are amongst the highest risk group of developing a problem with gambling, with recent research indicating that up to 85 per cent of adolescents having gambled in some form during the previous 12 months (Purdie 2011). It has also been found that parents' gambling behaviours and attitudes may influence whether a teenager is likely to gamble before they are 18 (Delfabbro 2003). This campaign aims to educate parents to gamble responsibly, be conscious of their gambling behaviour around children and grow resilience in the next generation.

In the media, social commentators and members of the public have expressed concern that some children now determine who will win a sporting match based on the odds rather than the statistics, injuries, ladder position etc. Young people are particularly vulnerable to the normalisation of gambling through exposure to gambling, sports betting advertising and the increase in availability and accessibility of gambling.

The underlying concern is the effects of underage gambling. Studies show teenagers who gamble are up to four times more likely to develop a problem with gambling than adults (Purdie 2011), and one in five adults with gambling problems started gambling before they were 18 (Department of Justice 2009).

In light of the research, the Foundation developed a youth strategy that engages youth and their families through a number of programs and initiatives that raise awareness of the risks associated with gambling and foster responsible gambling behaviours. Each program and initiative has specific target audiences, objectives and aims, however when targeting young people, it is undertaken in an age appropriate manner via a range of settings and partnership approaches.

The intention of this campaign is to generate discussion, both in the home and the community, about the risks of gambling and to support parents in protecting their kids from potential harm. This campaign is just one activity of our multi-faceted approach to reducing and preventing gambling-related harm in young people.

Like all of the Foundation's social marketing campaigns, KidBet went through a rigorous development process including focus testing to ensure the message was appropriate to the target audience and that it would achieve appropriate cut through. Additionally, the creative agency, McCann Worldgroup, adhere to the Communication Council's code of ethics.

Pre and post production focus group research confirmed positive support for the creative approach and that parents are always looking for a means to leverage difficult conversations with their kids. The Foundation believes this advertisement provides that pivotal point to encourage a conversation and directs parents to the tools to support that conversation with their children. This concept mirrors similar approaches utilised to communicate responsible drinking messages, where the emphasis is on prevention.

The aim of the campaign

The responsible gambling 'KidBet' campaign aims to raise awareness about the effects of exposing young people to gambling and in particular sports betting. The campaign primarily targets parents of teenagers and the wider community. The concept presents a discord between the innocence of childhood and sports betting. The tagline ('kid and bet – they should never go together') and endline ('Protect kids from the risks of gambling') clearly target parents.

The intention is to spark discussion about sports betting advertising and its effects on teenagers, and encourage parents to start the conversation about gambling with their

teenagers, similar to other important subjects that parents are inherently conscious of such as alcohol, drugs, sex education and bullying.

A study into parents perceptions of adolescent gambling indicated that when parents were asked to rank current day issues effecting their children such as drugs, alcohol and gambling on their level of importance, gambling was towards the bottom of the list (Derevensky 2011). The Foundation is building on years of experience in public health campaigns both here and overseas - these types of campaigns are very effective in increasing community awareness about risk factors, as demonstrated by the 'Drink Wise' campaign that showed the impact that parents behaviour (drinking) can have on subsequent generations.

Campaign approach

Whilst the initial use of parody is intended to gain the attention of parents, the intention is to have the advertisement abruptly switch to prominent youth related gambling statistics immediately following the introduction of 'KidBet'. The parodies continue to be interrupted by youth related gambling prevalence statistics as the advertisement progresses, highlighting the absurdity of the creative and emphasising the importance and risks associated with the issue.

Care was also taken to ensure a disclaimer 'Not a real betting agency' was visible each time the KidBet logo appeared prominently on screen. Typically, this occurs when a 'KidBet app' is referred to which is in fact a fictitious smartphone or tablet application. Australian law and the heavy scrutiny that providers, such as the 'iStore' and 'Google Play' apply to the approval of new apps will prevent the development and promotion of any such betting app being made available. As a further safeguard, the Foundation has filed a trademark application for 'KidBet' to ensure it is not used inappropriately.

The campaign is also backed by a media strategy which clearly identifies the parody elements. The advertisement is designed to be compelling so that people watch the advertisement to the end to encourage them to visit the kidbet.com.au website where extensive information is available to support parents in understanding the issue and talk to their teenager about gambling. Specifically, the website features a guide for parents on how to talk to their teenagers about gambling as well as information on the new sporting clubs and education in schools programs.

The Foundation acknowledges that the name 'KidBet' in isolation could potentially be misunderstood, but have made every effort in the development of the campaign to clearly not represent a real product or service.

The Foundation acknowledges that the creative employs a parody approach that children under the age of 12 would likely be incapable of understanding. Current research does not support that children under the age of 12 are at-risk of developing a problem with gambling, and were therefore considered a more appropriate demographic than a teenager to depict the fake betting agency within the advertisement.

The creative concept was designed to be complex for children under 12 to comprehend in order to avoid them being tempted to gamble, and if they are exposed to the television commercial, it will be at a time when parents are likely to be with them and able to explain the creative and parody approach.

Moreover, teenagers viewing the television commercial are not likely to be attracted to the notion of gambling as the creative uses younger children so are not representative of, nor relatable to, their own peer group and therefore not encouraged to participate.

The locations have been selected for their familiarity to 10 - 18 year olds, including a school, sandpit, playground and an empty suburban oval. These locations are associated with innocence, emphasising their appropriateness for children and highlighting their inappropriateness for betting. None of these locations are representative of the apparent glamour and excitement of sports betting.

Media placement

The Foundation does not believe in any way that the television commercial contravenes the 'AANA Code for Advertising and Marketing Communication to Children'. We ask the Advertising Standards Board to consider the following.

The advertisement is designed as a parody for parents aimed at encouraging them to discuss the issue of gambling with their teenage children. Mitchell and Partners Australia, the whole of Victorian Government media buyer, was extensively briefed to ensure the ad placement avoided specific hours and programs when children and young teenagers are likely to be watching programs unsupervised. The scheduled media placement specifically targets parents and at times when parents would be watching particular shows with their teenage children, to encourage conversations about gambling in the family context.

The KidBet television commercial received a 'PG' (Parental Guidance) classification from the Commercial Acceptance Division (CAD) – reference number 1007842. As there are effectively no restrictions on the digital multi-channels affiliated with the main channels, the Foundation implemented a stricter application to its media buy in relation to the digital multi channels to further limit the likelihood that children will view the commercial without parental supervision, if at all.

This involved restricting the placement of the advertisement on digital channels to only be viewed on weekdays between 8:30am-4pm, and 7pm-6am and on weekends between 10am-6am, provided these programs do not carry a 'P' (Pre-school) or 'C' (Children) rating. Restrictions were also placed on programs that were rated PG if they were likely to attract a younger teenage audience.

The Foundation has also agreed to forgo any bonus activity unless exact placement can be confirmed and agreed to in advance.

Unfortunately, despite the 'PG' rating and the Foundation's specific directions to Mitchells to ensure complete adherence to the classification, the television networks did place the commercial outside the allowable viewing times, potentially exposing children to the commercial.

To allow Mitchells and the television networks sufficient time to ensure the Foundation's strict viewing criteria was met, the commercial was rested from 23 October and will return on 2 November 2013 to coincide with Melbourne Cup Week, running up until the campaign's scheduled conclusion on 9 November 2013. The television commercial will continue to run in regional Victoria until 16 November 2013.

The commercial has also been selected to air at this time of year as research indicates that the Spring Carnival, and specifically Melbourne Cup Day, is when parents allow their children to gamble for the first time, and adult problem gamblers indicate that this was the time they placed their first bet.

Considering this research, the Foundation is encouraged that the kidbet.com.au website has received over 25,000 visitors since the launch of the campaign and over 1,500 parent information sheets have been downloaded. This is expected to increase following the return of the commercial on 2 November 2013, as based on data provided by Mitchells, television placements to date have resulted in over 1.1 million Victorians aged between 35 and 54 (the campaign's target audience) viewing the commercial at least once, with over 730,000 people viewing it three or more times. The Foundation has received very positive feedback from other organisations and government departments involved in public health promotion, and have not received any complaints from the gambling industry or child welfare groups. Radio advertising was not used for this campaign as the execution was not considered appropriate, as the nature of the advertisement requires the visual component in order to understand the campaign's underlying message.

Child welfare

Featuring a child actor in the campaign allows for the portrayal of a fictitious and unacceptable concept of children betting to attract public attention and spark discussion about the issue. The actor helps illustrate the risks of gambling in an exaggerated way in order to ensure parents do not overlook this growing issue.

The Foundation has reviewed the 'AANA Practice Guideline – Managing images of children and young people' and wish to assure the Advertising Standards Board that the welfare of all child actors involved was and continues to be the Foundation's priority.

The Foundation has followed all appropriate procedures and met relevant requirements to employ a child actor in the campaign, obtaining a Child Employment in Entertainment Permit (No.CEP-2013-06-21/41348) from the Department of Business and Innovation, Victorian Government. The same process was also followed for all other child actors that were involved as extras in the filming of the advertisement.

The Foundation has made all reasonable efforts to ensure the welfare of the 12 year old child in the advertisement and the Foundation adheres to the ethical principle to do no harm. The Foundation has taken care to ensure the child and his mother understand the concept, key messages and the purpose of the campaign. The child and his mother met with a qualified professional from Gambler's Help prior to filming to ensure the concept was fully understood, and this will continue to be available should they need further information or support. A dramaturge was employed for the entire production to assist the child during filming. The child and his mother discussed the campaign and the concept with his teacher and the Foundation's youth education officer presented age appropriate information to the child's class and other senior primary students prior to the launch of the campaign.

Finally, we do not believe this television commercial has contravened any other clauses under Section 2 of the AANA Code of Ethics.

We will be happy to provide further evidence to anything stated within this response.

Thank you for the opportunity to respond.

References

Productivity Commission, 'Gambling: Inquiry Report', Australian Government, June 2010.

Department of Justice, 'A study of gambling in Victoria – Problem gambling from a public health perspective', Department of Justice, Victoria, September 2009

Purdie, N., Matters, G., Hillman, K., Murphy, M., Ozolins, C., and Millwood, P. 'Gambling and young people in Australia', Report to Gambling Research Australia, Australian Council for Educational Research, August 2011

Derevensky, J., Campbell, C., Meerkamper, E., Cutajar, J., 'Parents perceptions of adolescent gambling: a Canadian national study', International Centre for Youth Gambling and High-Risk Behaviours' McGill University, Journal of Gambling Issues, Issue 25, June 2011.

THE DETERMINATION

The Advertising Standards Board ("Board") considered whether this advertisement breaches Section 2 of the Advertiser Code of Ethics (the "Code").

The Board noted the complainants' concerns that the advertisement appeals to children and is likely to encourage them to gamble as the message is not clear and may have the opposite affect to what is intended.

The Board viewed the 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 complainants' concerns that children would interpret the advertisement as encouraging and condoning gambling and the community awareness message is not clear.

The Board noted the advertisement features a young boy describing a betting agency for children which is called KidBet and we see various children discussing gambling and using a KidBet app on a tablet.

The Board noted that from the commencement of the advertisement the viewer is likely to believe that the advertisement is for a gambling facility that is for children. The Board noted that the style and theme of the advertisement is of the same nature as many of the current advertisements for betting facilities available to people over the age of eighteen, and that the gambling app we see a boy playing with on a tablet looks like a realistic gambling app which would be used by adults to place online bets. The Board considered that this advertisement is clearly intended as a parody of legitimate gambling advertisements and that adults who view the advertisement would understand the message regarding responsible gambling.

The Board noted that the advertisement had been given a 'PG' rating from CAD and that it had been aired in timeslots suitable for the rating. The Board noted that there is a genuine community concern regarding problem gambling and the social and economic impacts this can have on families and the community in general. The Board noted that the advertisement is aiming to deliver a very valuable message regarding the impact of gambling on children and the exposure that children get to advertising and promotions for betting agencies and gambling options. The Board considered however that in this instance whilst text does appear on screen throughout the advertisement that provides statistics on how many children have gambling problems, and there is a small disclaimer at the bottom of the screen that states: "Not a real betting agency" in the Board's view the visuals of the advertisement are strongly suggestive of gambling as an activity which could and should be enjoyed by children and that this is the message that someone listening to the advertisement without watching and seeing the written statements would take away.

The Board noted that the final tagline states "Kids and Betting, they should never go together" but considered that this message is not made clear enough throughout the advertisement and its inclusion at the end is unlikely to be taken in by children who have just viewed people their own age promoting (an albeit fake) betting agency which caters for children. The Board noted that as the advertisement has been rated PG it is likely to be viewed by children and considered that the lack of audio cues that children gambling is wrong means that children are unlikely to understand that gambling can have negative consequences.

The Board recognised the important message the advertiser is trying to convey regarding the dangers of exposure to gambling on children however the Board considered that in this instance the advertisement does not get the message across clear enough to be understood by a PG audience. Consistent with a recent decision concerning an important community service message which was presented in a way that may not be understood by children (0264/13) the Board considered that the advertisement did depict material contrary to Prevailing Community Standards on gambling.

The Board determined that the advertisement did breach Section 2.6 of the Code.

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

ADVERTISER RESPONSE TO DETERMINATION

The Victorian Responsible Gambling Foundation takes its mission to foster responsible gambling and reduce gambling-related harm very seriously. Therefore, the Foundation strongly disagrees with the Board's determination that the KidBet television advertisement contravenes prevailing community standards on health and safety in contravention of section 2.6 of the AANA Code of Ethics and intends to strongly defend this vital campaign.

For clarity, the Foundation is seeking independent review of the determination and does not consider the matter to be closed. As a result no decision has been made by the Foundation with regard to the ongoing broadcast of the advertisement, ie no decision has been made regarding future placement of the advertisement. But in the interim the Foundation considers it imperative to make the following comments for the record.

Firstly, in the determination the Board seems to contradict itself on various key elements. Importantly, the Foundation specifically targeted the advertisement at adults, such that the message was directed at adults and would only be viewed during appropriate adult (or adult-supervised) viewing times – specifically, under the PG rating received from CAD. The advertisement was not directed towards nor is the messaging relevant to children. Indeed, for the most part it is inconceivable that the messaging would even be understood by young children, and to find otherwise is simply implausible. If indeed the advertisement is viewed by children, the PG rating means it is intended to be only done so with parental supervision, where the parents are clearly able to guide, advise and educate their children on the nature of the message. This is an important part of this campaign and should not be underestimated – the importance of parental education and discussion on these fundamentally important messages is paramount to avoiding crippling outcomes later in life.

Further, the complete message of an advertisement simply must be considered when determining whether or not it is problematic under a Code, and especially when considering the determination in this case. In its determination the Board states that the advertisement is

“strongly suggestive of gambling as an activity which could and should be enjoyed by children and that this is the message that someone listening to the advertisement without watching and seeing the written statements would take away”. This is ridiculous of course, as the advertisement is a television commercial – it contains both visual and audible elements, and this is the very basis of the medium and the difference between television and radio. Television is not a new medium and television advertisements should not be considered the equivalent of radio advertisements – they are not the same. There is no conceivable reasonable assessment of this television advertisement as a whole that could conclude that the Foundation or the advertisement condones or promotes gambling by children. Further, even if the Board’s view was somehow accurate despite all, and despite the clear communications within the advertisement, and children watching the advertisement were tempted to look up the KidBet brand to somehow gamble online, they would find only the Foundation’s responsible gambling messaging and would be educated once more – there is no way in which a child watching the advertisement would or could be driven to gamble and to claim otherwise is absurd.

The Board also stated in its determination that while the end of the advertisement (and various other parts of the advertisement throughout) clearly indicate that kids and betting should not go together, there is not sufficient repetition of this message throughout the advertisement to make the point clear. Again, a bizarre argument which if applied to every advertisement brought before the Board for assessment under the Codes would render most advertising unacceptable for broadcast on Australian television. Public service announcements, community messages and other such advertisements which largely rely upon emotive, impactful imagery in particular would have absolutely no place on Australian television and the community would be much the poorer for this. In particular the Foundation recalls the decades of hard-hitting Transport Accident Commission advertising involving drink driving, drug driving, speeding etc, all of which had no messages other than the final “Drink Drive Bloody Idiot” style end-frames. Also, the recent DrinkWise campaign involving young children being exposed to poor alcohol choices of their parents (the “Drink Cycle” campaign – see <http://www.youtube.com/watch?v=jJNNtsJmZb4>) and Heart Foundation advertising are prime examples of advertising that, using the Board’s logic in this determination, would never have been broadcast as in all cases they only clarify the public safety/education nature of the message as the last frame, and this is done purely for messaging impact.

Finally, the reference by the Board to the recent “Chance” advertisement by Fire & Safety NSW as some kind of relevant precedent fundamentally misrepresents the nature of the “Chance” advertisement and simultaneously shows a clear lack of understanding of the Foundation’s advertisement. Without passing judgment on the “Chance” advertisement, it depicted a character warming his socks on a radiator heater in a clearly light-hearted but certainly foolish attempt to warm his socks, which was clearly shown as occurring. The messaging is entirely different and the comparison is fundamentally flawed such that it cannot be validly made to this KidBet campaign. There is no capacity for children to watch this campaign and then proceed to gamble. There is no way to make the purported comparison validly.

This campaign, and the Foundation’s broader youth engagement strategy, are based on the latest research pointing to a growing body of knowledge that young people are at greater risk than ever of being exposed to and affected by enticements to gamble by large gambling companies both in Australia and abroad. The Foundation’s research is thorough and shows

clearly that the community is fed up with the prevalence of obtrusive advertising from gambling companies and online sites across all manner of media and is crying out for support in this space regarding their concerns. The Foundation shares these concerns and is primarily focused with this campaign in making adults aware of the issue and providing details on how to seek support. The messaging in the advertisement is clear in this regard.

Further, the Foundation notes that:

- The campaign and the broader strategy have been informed by advice from public health and social marketing experts and builds on extensive experience with public health marketing.
- In 2012, there were reportedly 20,000 sports betting advertisements on free to air TV and this demonstrates a threefold increase from 2010. This public awareness campaign was implemented with a stringently conservative media buy that adhered to strict guidelines, shown at the same as gambling advertising to highlight and counter gambling advertising.
- The media buy for the campaign was clearly designed to target parents and older teenagers to both prompt and enable a conversation about the issues of underage gambling among this group. The AANA Code of Ethics Practice Note with regard to relevant audience indicates that the Board ‘examine the media plan (formal or informal)’ and ‘it is the audience that the advertiser intends to see the marcomms (advertising) that the Board should ‘have regard to’.
- The parody was deliberately designed to be ‘above the heads’ of children and the media buy planned to avoid times and shows where younger children are watching unsupervised. To argue that the advertisement contravenes standards because young children are watching unsupervised at these times is an unreasonable measure and not one applied to, for example, the gambling industry ads being shown in similar time slots. In addition, whether children are watching television at a time when they are supposed to be supervised is not a matter that the advertiser is able to control, and certainly is not a matter upon which the advertiser can be judged. If this was the case, the rating system would require a complete overhaul and all content regardless of rating would need to be considered as viewed by children.
- There is strong research to support the impact of gambling advertising and promotions on adolescents, both on their decision to take up gambling and on attitudes towards gambling. Therefore, the advertisement was designed to not appeal to this age group by deliberately using a young model that older teenagers are not likely to want to emulate.
- There is also no evidence to suggest that primary school aged children are prompted to gamble by gambling advertising and the parody in the creative means the advertisement will not be understood by younger children. Where children do notice the advertisement, the Foundation argues that the media buy and the prominent warnings displayed throughout the advertisement provides parents with the information they need to explain the message.
- The advertisement was also supported by distribution of the 24 page information guide: What’s the big deal? Talking to teens about gambling to a million Victorian homes which further supports parents and older teenagers, the intended audience to have conversations about the risks of gambling.

- Again the Board has indicated that ‘the visuals of the advertisement are strongly suggestive of gambling as an activity which could and should be enjoyed by children and that this is a message that someone listening to the advertisement without watching and seeing the written statements would take away’. While this comment is, of itself contradictory as it notes the visual warnings but then relates to someone ‘only’ listening but it also ignores the medium being used to convey the advertisement. Again television advertisements are intended to be seen and heard concurrently hence the multiple on-screen warnings are part of the message for the intended audience.

- Further, by abiding by the PG rating granted by CAD, the unconventional images in the advertisement act as poignant reminders for parents to discuss gambling with their children as it is a topic that young people will not understand, while importantly, also prompt parents to examine their own gambling behaviour.

- The final line in the advertisement ‘Kids and betting – they should never go together’ is preceded by the child actor stating ‘coz that’s what it’s all about, right?’, with a very apprehensive look on his face, which leaves the viewer with a strong take-away message that underage gambling is not to be dismissed lightly.

In summary, the Foundation will argue that on the weight of the evidence, there is widespread community support for the campaign and the broader strategy and therefore, the advertisement could not be considered to contravene community standards. Specifically:

- The campaign received extensive positive media coverage with an estimated audience of over four million viewers in addition to an estimated audience of 1.6 million through the media buy. There has been no sign of any groundswell of community concern on any media forum, notwithstanding a small number of complaints to the ASB.

- The Foundation has been praised and supported by public health experts for the quality of its campaign and strategy.

- The small number of complaints to the Board (six) compared to a spectacular response to the campaign (60,000 hits on the KidBet website in 6 weeks) is a strong indicator of significant community support for the Foundation’s approach to the issue of underage gambling and a miscalculation by the Board of the prevailing community standards in this instance.

In closing, the Foundation argues that the strong community outcry over the impact of gambling advertising on children evident earlier this year which sparked a Senate inquiry into gambling advertising demonstrates the need for clear and decisive action and KidBet is an important part of that action.

This is an application for review of a decision of the Advertising Standards Board (the Board) relating to a television advertisement by the Advertiser, the Victorian Responsible Gambling Foundation (the Foundation).

The advertisement is described in the ASB Case Report as follows:

“The advertisement opens with a 12 year old boy introducing the concept of a betting agency called “KidBet”. The advertisement is then interrupted by the appearance of a prominent statistic that highlights the risks to young people of over exposure to sports betting messages. The sports betting parodies continue and are again interrupted on two further occasions with youth related gambling prevalence statistics. The advertisement concludes with a close up of the 12 year old saying ‘So get your bets in and start winning. Coz that’s what it’s all about ...right?’. A sombre look comes over his face before it cuts to a screen showing the call to action whilst an adult male voiceover states ‘Kids and betting. They should never go together. Protect kids from the risks of gambling. Find out how at kidbet.com.au’. Throughout the advertisement a disclaimer stating that this is ‘Not a real betting agency’ is visible in the bottom right hand corner each time the KidBet logo appears prominently on the screen.”

The original complainants claimed that the advertisement raised issues which are addressed by the Advertiser Code of Ethics (the Code).

Determination of the Board

The Board considered the advertisement under Section 2 of the Code, specifically Section 2.6 of the Code. On 13/11/13 the Board upheld the complaints and found that the advertisement complained of breached Section 2 of the Code, in particular Section 2.6, in that it depicted material contrary to Prevailing Community Standards on gambling.

Review Application

The grounds for seeking a review are as follows:

1. New or additional evidence now available which could have a significant bearing on the determination;
2. There was a substantial flaw in the Board’s determination in that it was made in clear conflict with the weight of evidence in the matter as provided;
3. There was a substantial flaw in the process by which the determination was made

The Advertiser sought review of the Board’s decision. The Advertiser cites all three grounds for review in its review application.

Regarding ground 1, the Advertiser provides, in support of the review application, statistics and research results regarding the effectiveness of this campaign. It states that these statistics were not provided at the time of its initial response because at that time “it was not conceivable that the determination of the Board would be that the overall messaging of the advertisement could be contrary to the prevailing community standards on health and safety”. One of the two research reports appears to have been provided to the Advertiser after the date of the Board determination.

The Advertiser claims, in respect of ground 2, that the Board “failed to properly consider the content of the advertisement as a whole in that it referenced but then ignored various

elements of the advertising that made it abundantly clear that children and gambling should never go together - i.e. it considered all of the elements of the advertisement that may support a negative view without giving due consideration to the counter-balancing elements of the messaging. This process inevitably led the Board to conclude that the advertisement did not sufficiently make clear that children gambling is to be avoided and never condoned, when this is fanciful based on the facts and the available evidence. In addition, ground 1 [sic] is also met in so far as the rating for the advertisement was ignored, and the Board appeared to make the determination in spite of the advertisement's PG rating."

Regarding ground 3, the Advertiser states that "the Board inexplicably considered the audio elements of this television commercial in isolation while ignoring the massively impactful visual elements. This clearly carried significant weight in the final determination, rendering the process fundamentally flawed. The advertisement is not a radio advertisement, and as such the process by which the determination was made was fundamentally inadequate."

The original complainants were invited to comment on the request for review and three of the original seven complainants provided a comment. However, one comment received clearly relates to an entirely different advertisement and not the advertisement which is the subject of this review.

INDEPENDENT REVIEWER'S RECOMMENDATION

Ground 1

The Advertiser has now provided a letter, dated December 3 2013, from Orima Research containing a summary of the results of two different research projects which were based on the "KidBet" advertisement. The first project was a post-production focus testing study (qualitative) involving 31 people in four focus groups and the second was a campaign evaluation research study (quantitative) involving 506 Victorian parents. The letter was provided to the Advertiser in response to the complaint (s) received by the ASB regarding the "KidBet" advertisement. The letter concludes that the research results provide 'strong, independent evidence that the KidBet TV advertisement is in line with prevailing community standards and that the concerns raised in the ASB complaint are likely to be held by only a small minority of Victorian parents'.

The Advertiser also notes that the campaign has received "extensive positive media coverage with an estimated audience of four million viewers in addition to an estimated audience of 1.6 million through the media buy. This is contrasted with the 'small number of complaints to the ASB". The Advertiser also notes that there were 60,000 hits on the KidBet website in 6 weeks.

It is my opinion that the two research studies noted above, especially the campaign evaluation study, do constitute 'new or additional relevant evidence which could have a significant bearing on the determination'. The second study in particular is said to relate to audience reaction to the campaign. Ground 1 is therefore satisfied.

I suggest that it would be of most value to the Board if the full research study results were provided to the Board, rather than just a summary, when it reconsiders its determination on this ground.

Ground 2

The Advertiser has claimed that this ground is satisfied because the Board failed to properly consider the content of the advertisement as a whole in that it only considered elements of the advertisement which supported a negative view without giving due consideration to the counter-balancing positive elements of the messaging. In addition, the Advertiser claims that the Board ignored the rating for the advertisement as the Board appeared to have made a determination in spite of the advertisement's PG rating.

It is clear that the Board, in making its decision, acknowledges that the advertisement 'is clearly intended as a parody of legitimate gambling advertisements and that adults who view the advertisement would understand the message regarding responsible gambling'. The Board clearly does not doubt that the Advertiser has aimed the advertisement at adults and attempts to deliver 'a very valuable message regarding the impact of gambling on children and the exposure that children get to advertising and promotions for betting agencies and gambling options'. It is not the motivation of the advertisement with which the Board takes issue, but rather, its execution. It should be noted here however, that there appears to be a lack of clarity on the part of the Advertiser regarding the targeting of the advertisement, as in one part of its review submission it states that it 'specifically targeted the advertisement at adults' but then in a later part of the submission states that 'the media buy for the campaign was designed to target parents and teenagers'.

The Board has taken the view that the advertisement, despite its intention to deliver an important community message, does not 'get the message across clear [sic] enough to be understood by a PG audience' and thus breaches Section 2.6 of the Code. The Board states that this view is consistent with a recent decision regarding a community awareness advertisement for Fire and Rescue NSW (0264/13) in which the advertisement (also carrying a CAD PG rating) was determined to have been presented in a way that may not be understood by children. The test is the impression that the advertisement would have on viewers.

In making its determination in the instant case, the Board supports its view that the advertisement is presented in a way that may not be understood by children by examining the visual and aural elements of the advertisement. However, in doing so, the Board appears to contradict itself when it says:

'The Board considered however that in this instance whilst text does appear on screen throughout the advertisement that provides statistics on how many children have gambling problems, and there is a small disclaimer at the bottom of the screen that states: "Not a real betting agency" in the Board's view the visuals of the advertisement are strongly suggestive of gambling as an activity which could and should be enjoyed by children and that is the message that someone listening to the advertisement without watching and seeing the written statements would take away.' (my emphasis)

It is unclear exactly what the Board is trying to say in this statement, which is a critical part of the reasoning used by the Board in coming to its determination. Obviously, if someone is listening to the advertisement without watching it, that person would be unable to see the very visuals which the Board says are strongly suggestive of gambling as an activity which could and should be enjoyed by children. In other words, that person would be unable to see the very elements which form the core of the problem as the Board sees it. If, on the other

hand, the Board is somehow implying that it would be possible to see the other television visuals but not see either the text statistics running across the visuals nor the printed disclaimer, it should demonstrate clearly how this would be possible.

In my view the Board has attempted to consider both the visual and aural elements of the advertisement but has failed to properly clarify the result of this consideration, instead providing an unclear statement on this crucial issue which lies at the heart of the Board's determination. In my opinion this constitutes a substantial flaw in the Board's determination and on this basis ground 2 is satisfied.

On the additional issue of whether the Board made its determination in spite of the advertisement's PG rating, it is my opinion that the fact that an advertisement carries a PG rating allotted by CAD does not preclude the Board from finding a breach of Section 2.6 under the present circumstances. The Board has made a similar determination in case 0264/13. In the present case, the Board notes the PG rating and that the advertisement was aired in timeslots suitable for the rating. However, it is well understood in broadcasting circles, that the allotting of a PG rating to a program or advertisement does not necessarily guarantee that children will not view the material without parental guidance/supervision. The Board was entitled to conclude that the PG rating was not conclusive of itself as to whether the advertisement had breached the code. Ground 2 is not satisfied on this issue.

Ground 3

The Advertiser's claims regarding ground 3 are largely the same as for ground 2, in that it claims the Board has failed to consider the advertisement as a whole, considering audio elements while ignoring visual elements. As noted above in this recommendation, the Board has failed to properly clarify the results of its consideration of both the visual and aural elements of this advertisement (ground 2). Any flaw in process should be corrected by the Board's reconsideration of these matters.

The Advertiser also makes reference to the ASB Practice Notes in regard to 'relevant audience' and the need for the Board to consider the media plan for advertisements in question. The Practice Note in question refers to relevant audience provisions against Code Sections 2.4 (sex, sexuality and nudity) and 2.5 (language). These provisions do not relate to complaints being considered under other sections of the Code, as is this present case (2.6). Therefore the Board was not required to consider the media plan for this case and the claim of the Advertiser regarding this point does not satisfy ground 3.

More generally, the Advertiser includes in its lengthy review request considerable material regarding general research concerning the effect of gambling on adolescents and the more general social impact of gambling and resulting community attitudes. The views of various experts are also referred to in detail. The Advertiser refers to its view that: 'on the weight of the evidence, there is widespread community support for the campaign and the broader strategy'.

As review grounds 1 and 2 are satisfied, I recommend that the Board reconsider its decision and determine whether there has been a breach of the Code, taking into consideration the matters raised above.

BOARD DETERMINATION ON REVIEW

The Board noted the Independent Reviewer's recommendation that the Board reconsider its decision in this case on the basis that:

- The two research studies, especially the campaign evaluation study, do constitute 'new or additional relevant evidence which could have a significant bearing on the determination'.
- The Board, in its attempt to consider both the visual and aural elements of the advertisement, failed to properly clarify the result of this consideration, instead providing an unclear statement and that this constituted a substantial flaw in the Board's determination.

The Board also noted the Independent Reviewer's determination that the Board was not required to consider the media plan for this case and the claim of the Advertiser regarding this point does not satisfy ground 3.

The Board noted the extensive submissions by the advertiser and the results of research it had provided as part of its review. The Board in particular noted the research findings that stated:

"Following exposure to the television advertisement, most participants recognised the campaign approach as being to parody advertising from sports betting companies. This approach was found by most participants to be appropriate and effective at raising awareness with, and educating the target audience about, the problems associated with children gambling."

The Board further noted in the research findings that: "only a few participants initially felt that the approach of the campaign may not demonstrate the negative consequences of gambling extensively enough and/or had potential to encourage children to consider gambling or to 'seek out the KidBet app.'the research found that these perceptions were considerably reduced through multiple viewings of the TV advertisement...."

The Board also noted that based on findings from the research, enhancements were made to the advertisement such as the addition of facts/statistics and the latter part of the tagline in order to assist in reducing some of the confusion about the product.

The Board noted that it had previously considered a similar style of advertisement in the Drinkwise (274/08) advertisement. That advertisement depicted a series of scenes in which a young boy was asked to get his father a beer and then was depicted as an adult asking his own son to do the same thing. In that case the Board considered that:

'The Board found the advertisement to be clear and to the point imparting an important social message.

The Board further considered that the advertisement was a clever form of social messaging because it struck a nerve in many members of the community - that of the vulnerability of children in response to the unspoken messages they receive from adults about consuming excessive alcohol - because they could see their own actions mirrored in this advertisement.

The Board considered that the current advertisement was similar in that it too was intended to strike a nerve with parents by depicting unsuitable behaviour of children. The Board noted that the advertiser's research indicated that only a small percentage of adults were confused by the advertisement. The Board considered that most adults and teenagers would understand that the advertisement is promoting responsible gambling behaviour by adults, in order to present appropriate behaviour for their children. In this sense the Board considered that the advertisement was suitable for adults and did not depict material that adults would see to be promoting gambling by children.

The Board noted the advertisement was given a PG rating by CAD. The Board noted that the PG classification is described as "material classified PG may contain careful presentations of adult themes or concepts but must be mild in impact and remain suitable for children to watch without supervision."

As the advertisement was likely to be viewed by children the Board also considered the likely understanding that a child would take from the advertisement.

In considering the above, the Board noted that the advertisement as a whole, but in particular the scene involving a group of children gathered around an iPad at a cricket match, presents scenarios involving children in realistic circumstances that would be attractive to children. The Board considered that the advertisement includes scenarios that strongly suggest that the kidbet app is real and accessible to children.

The Board considered that under the supervision of parents, any confusion regarding the message of the advertisement could be discussed and clarified.

The minority of the Board considered that the important message that the advertisement was trying to convey justified the suggestion of children gambling. In the majority's view, any confusion of younger children would be able to be explained by parents and, importantly, if a child did try to access online gambling or a product like 'kidbet' there is no such product and, as the advertiser notes, online providers ensure that such products do not become available.

"...Australian law and the heavy scrutiny that providers, such as the 'iStore' and 'Google Play' apply to the approval of new apps will prevent the development and promotion of any such betting app being made available...."

The majority of the Board however considered that there is a real risk that younger children would consider that the product is promoting a real betting product and that the text that is superimposed would not necessarily be read or understood by children and would not clearly identify the fact it is not a betting product available to children.

The Board considered it likely that young children will not understand the irony and sarcasm and that the depiction of a young boy talking about how much he loves to bet on sport, makes gambling attractive to children.

Based on the above, the majority of the Board considered that the advertisement has potential for confusion, particularly by children, as to whether or not the advertisement is promoting gambling and the availability of a betting app for children. The majority of the board considered that, as noted in the PG classification, ‘PG may contain careful presentations of adult themes or concepts but must be mild in impact and remain suitable for children to watch without supervision’. In the view of the majority of the Board the potential for confusion by children who view the advertisement without adult supervision does amount to a depiction of material that is contrary to prevailing community standards on health and safety. In the majority’s view, although the message is attempting to highlight to parents how their gambling behaviour can negatively impact on children, this message is likely to be unclear to younger children and the potentially adverse consequences do not justify the depiction of material that is contrary to community standards on safety for children.

Based on this, the Board considered that the advertisement did breach section 2.6 of the Code and reconfirmed its original decision to uphold the complaint.