



Case Report

1	Case Number	0447/16
2	Advertiser	Tabcorp
3	Product	Gaming
4	Type of Advertisement / media	TV - Free to air
5	Date of Determination	09/11/2016
6	DETERMINATION	Upheld - Modified or Discontinued
7	IR Recommendation	Reconfirm original decision

ISSUES RAISED

- 2.6 - Health and Safety Within prevailing Community Standards
- 2.8 - Excess participation Condone or imply excess participation

DESCRIPTION OF THE ADVERTISEMENT

The advertisement is a television commercial depicting a man returning from a trip, placing his bags on his kitchen counter and being greeted by his girlfriend who asks him how his trip had been. The male character then reminisces on his trip. The advertisement's vision depicts a group of men on a camping/fishing trip looking at live and replay racing vision and the racing Form on their TAB App. The song "Always" by Bon Jovi plays over the vision. At the end of the advertisement, the vision shows the male character in the kitchen responding to his girlfriend's question.

THE COMPLAINT

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

This ad glorifies gambling and gambling addiction. This ad is always shown during family friendly hours exposing children to gambling and making it look like a great life choice.

This add strongly promotes the easy access to gambling, suggesting that is more important than enjoying your surrounds and company.

If people really acted this way it would be classed as a serious addiction!

The ad implied that it would be "fun" and "sociable" to lie to your partner about gambling addiction. It glamorises gambling as a kind of pleasure that one could indulge in over a weekend, but come home unsuspected. If someone had just such a need to get online for a whole weekend (as is implied by the ad), and then conceal that from their partner (as is implied by the ad), they would be suffering a serious gambling addiction. It is dangerous and offensive that a gambling company would glamorise this as "something to get away with", made ever worse by the choice of soundtrack "I will always love you". This is a horrifying, glamorised and false account of the lies a gambler tells themselves and their family. The "lost" weekends are a trauma and not a joy for both the problem gambler and the family, and a fact that this ad seeks to glamorise and disguise. Shocking.

THE ADVERTISER'S RESPONSE

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

We refer to your letter regarding a complaint (reference number 0447/16) received by the Advertising Standards Bureau (ASB) in relation to a Tabcorp advertisement.

We understand that the relevant advertisement was broadcast at around 7.22pm on 7 October 2016 during 'A Current Affair'. We understand that the complainant may be referring to Tabcorp's advertisement named "Live Vision 30" with key number 'NEWTAB160041' (the Advertisement).

The complainant's reasons for concern regarding the Advertisement are:

Issues Raised To Date:

- 2.6 - Health and Safety Within Prevailing Community Standards*
- 2.8 – Excess participation Condone or imply excess participation*

REASON FOR CONCERN:

The ad implied that it would be "fun" and "sociable" to lie to your partner about gambling addiction. It glamourises gambling as a kind of pleasure that one could indulge in over a weekend, but come home unsuspected. If someone had just such a need to get online for a whole weekend (as is implied by the ad), and then conceal that from their partner (as is implied by the ad), they would be suffering a serious gambling addiction. It is dangerous and offensive that a gambling company would glamourise this as "something to get away with", made ever worse by the choice of soundtrack "I will always love you". This is a horrifying,

glamourised and false account of the lies a gambler tells themselves and their family. The "lost" weekends are a trauma and not a joy for both the problem gambler and the family, and a fact that this ad seeks to glamourise and disguise. Shocking.

TABCORP'S RESPONSE

The complainant has alleged that the Advertisement may breach section 2.6 of the AANA Code of Ethics (the Code of Ethics) which states that:

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

The concept of 'Prevailing Community Standards' is considered in the Practice Note to the Code of Ethics which states that the Board 'will have regard to community standards at the time the advertising or marketing communication was published.'

The complainant has also alleged that the Advertisement may breach section 2.8 of the AANA Wagering Advertising and Marketing Communication Code (the Wagering Communication Code) which states that:

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

The Advertisement is not contrary to 'Prevailing Community Standards' and does not portray, condone or encourage excessive participation in wagering activities for the reasons set out below.

1. Tabcorp does not agree with the complainant's interpretation of the Advertisement set out in their 'Reason for Concern'.

The Advertisement does not "glamorise gambling as a kind of pleasure that one should indulge in over a weekend, but come home unsuspected" and is not a depiction of a problem gambler concealing his gambling from his family. Tabcorp does not agree with this interpretation of the attitude of the male character or the implication in the Advertisement that it would be "fun" and "sociable" to lie to your partner'.

Firstly, the Advertisement shows the male character reminiscing on his weekend reviewing the racing Form and watching live and replay racing vision on his TAB App. The Advertisement does not show the male character, or his friends, actively engaging in gambling or wagering. Even if it could be inferred that the characters were participating in gambling, Tabcorp does not consider that the Advertisement in any way glamorises gambling.

Secondly, in response to his partner's query about how his trip was, the male character responds "yeah...loved it". There is no suggestion in the Advertisement that the male character was attempting to hide or disguise anything from his partner. The male character's attitude at the beginning and end of the Advertisement show him reminiscing on the entertainment and enjoyment he derived from his weekend of using the TAB App with his friends.

The Advertisement is intended to promote that "No one has more racing action than the TAB App" in a light-hearted and humorous manner and to depict the enjoyment that many

Australians derive from using the racing Form and watching racing vision on their phone. Tabcorp does not agree that it is a “Prevailing Community Standard” that the general public should not engage in gambling, or in using the racing Form or watching racing vision (either live or replayed) for entertainment or leisure.

2. Gambling advertising is legal. Gambling advertising is legal in all Australian States and Territories. This advertisement is a general brand and product advertisement and does not breach any gambling advertising legislation. Section 2.6 of the Code of Ethics does not ban gambling advertising nor does any other part of the Code of Ethics or Wagering Communication Code.

3. Gambling is legal in Australia and a form of entertainment and leisure. TAB is licensed and permitted to provide gambling services in Australia. Gambling is a form of entertainment and in Australia is highly regulated by state and federal laws in order to protect certain segments of society.

4. This is the first complaint that Tabcorp is aware of regarding this Advertisement. The Advertisement bearing the slogan “No one has more racing action than the TAB App” has formed part of Tabcorp’s brand proposition since around September 2016. The Advertisement first aired on free-to-air and subscription television on 2 October 2016, and has aired around 494 times. Approximately 162,100 people viewed the episode of ‘A Current Affair’ during which the Advertisement was aired, that was referred to by the complainant. The Advertisement has also been available for viewing on YouTube since about 28 September 2016 and has been viewed around 1,652 times. Despite the number of times that the Advertisement has been broadcast, Tabcorp is not aware of any other complaints.

5. The Advertisement does not depict ‘excessive participation in wagering activities’. Firstly, as discussed above, the Advertisement shows the male character and his friends watching racing vision. There is no direct portrayal of the male characters actually gambling or wagering.

Secondly, the Advertisement does not fall within the concept of ‘excessive participation in wagering activities’ as considered by the Practice Note to the Wagering Communication Code. The Practice Note 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 Advertisement does not depict or suggest any of the potential situations raised by the Practice Note. The Advertisement suggests that the male character enjoyed his weekend viewing the Form guide and watching racing vision on a trip with his friends; this is depicted as an activity outside the usual routine and priorities of his daily life.

6. *The Advertisement contains a responsible gambling message. Tabcorp does not agree that the Advertisement glamorises the trauma of “lost” weekends caused by “problem gamblers”. As further detailed below, Tabcorp is internationally recognised for taking a leadership position in the responsible service of gambling products and is bound by the Responsible Gambling Codes. The responsible gambling message appears and remains on the screen for around 10 seconds during the 29 second Advertisement.*

Tabcorp’s approval process

All Tabcorp advertisements are reviewed and authorised by Tabcorp’s internal Legal Department and produced in line with AANA Code of Ethics and the AANA Wagering Advertising & Marketing Communication Code (since it came into effect on 1 July 2016). In addition, FreeTV’s Commercials Advice team approved this Advertisement prior to it being broadcast on free-to-air television.

Tabcorp’s commitment to responsible gambling

Tabcorp takes its responsible gambling obligations seriously and is committed to the responsible delivery of gambling products. Responsible gambling is an important part of our operating philosophy and company values.

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 complainants’ concerns that the advertisement glorifies and promotes excessive gambling and implies it is okay to lie to your partner about your gambling addiction.

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.

The Board considered Section 2.8 of the Wagering Code which provides: “Advertising or Marketing Communication for a Wagering Product or Service must not portray, condone or encourage excessive participation in wagering activities.”

The Board noted the complainants concern that the advertisement glorifies and promotes excessive gambling. The Board noted the advertisement features men on a camping trip and

that the men are depicted spending their time wagering and watching racing on their mobile devices rather than focusing on their surroundings or activities, such as fishing or barbequing their meal.

The Board noted that in every scene of the men on their camping trip we see them using the Tabcorp App on their mobile phones. The Board noted that in the first scene the men appear to be placing bets as they are checking the 'form' of the horses, and that subsequent scenes show them watching live races and then replays.

The Board considered whether this is a depiction of them participating in wagering 'activities' and noted that there is no definition of a wagering 'activity.' The Board considered that the depiction of the people watching the app, betting on a race and then watching the race using the Tabcorp App can be reasonably interpreted as being engaged in a wagering activity in the context of an advertisement for a wagering product.

The Board then considered whether this was 'excessive' participation in wagering activities.

The Board 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...wagering taking a priority in a participant's life..."

A minority of the Board considered that the men are on a one off boys weekend and could have just placed one bet and were possibly watching the relevant race followed by replays of the same race which in their view did not of itself amount to excessive wagering but rather showcases how the advertised App can allow you to re-live a single wagering experience. The minority of the Board noted that the trip was portrayed as a men's camping weekend which would be a one-off scenario rather than a regular occurrence and that as only one wager was seen to be made then this does not amount to excessive wagering activity.

The majority of the Board however noted that when the man is asked how his trip was, his reminiscence focuses purely on participation in wagering activities. The Board noted that when the men participate in the wagering activities they are oblivious to what is happening around them and considered that by showing the men unaware of fish jumping out of the water while they are fishing, the food they are cooking on a barbeque burning and then lying in bed at night watching racing on a wagering App the overall suggestion is that the wagering takes priority in all aspects of the men's weekend. In the majority of the Board's view this is depicting excessive participation in wagering activities.

The Board noted that the images of the burning fish on the BBQ and the fish jumping out of the water in front of the men who are looking at the advertised product, is intended to be humorous. However in the Board's view this does not negate the portrayal of the wagering activity taking priority in the men's lives on that weekend. The Board considered that the depiction is not strongly condoning or encouraging excessive participation, but that it is portraying excessive participation in wagering activities.

Based on the above, the Board determined that the advertisement did portray excessive participation in wagering activities and breached Section 2.8 of the Wagering Code.

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 the advertisement suggests that lying to your partner about your excessive gambling is acceptable.

The Board noted that the advertisement depicts a scenario where a man has been on a men’s weekend away and is asked by his partner how his trip was. The Board noted the man’s response is that he loved it and considered that this is not an untrue response and the man does not say what he actually did on his trip. The Board noted that the advertisement does not suggest that the man should lie or did lie about his activities and considered that the advertisement did not depict or condone lying about wagering activities.

The Board considered that the advertisement did not depict material contrary to Prevailing Community Standards on health and safety.

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

Finding that the advertisement did breach Section 2.8 of the Wagering Code, the Board upheld the complaints.

THE ADVERTISER'S RESPONSE TO DETERMINATION

We refer to your letter dated 10 November 2016 and the draft Case Report advising that the Advertising Standards Board (Board) upheld the complaints made in respect of a Tabcorp advertisement named “Live Vision 30” with key number ‘NEWTAB160041’ (the Advertisement) and determined that the Advertisement is in breach of section 2.8 of the AANA Wagering and Advertising and Marketing Communication Code (Wagering Code).

While Tabcorp notes the Board’s decision, we do disagree with it and intend to seek an independent review. Tabcorp maintains that the Advertisement does not breach the Wagering Code.

Nonetheless, Tabcorp confirms that the Advertisement is not currently being broadcast on free-to-air or subscription television and does not propose to broadcast the Advertisement until such time as the matter is resolved.

We thank you for providing the opportunity to provide a statement.

INDEPENDENT REVIEWER'S RECOMMENDATION

ISSUES RAISED

Code of Ethics 2.6: Health and safety within prevailing community standards

Wagering Code 2.8: Excess participation in wagering activities

DESCRIPTION OF THE ADVERTISEMENT

The advertisement comprises a television commercial showing a man returning from a fishing trip. He is greeted by his partner in the kitchen who asks how the trip went. The commercial then shows the man reminiscing about the trip by means of a mental replay of what occurred. The reminiscences show a group of men in a forest adjacent to water. The men are looking at live races and then replays of horse races on 'apps' on their phones, including the form guide on the TAB App. In the background, a fish rises to the surface of the water unnoticed by the men; in the foreground, the barbequed fish is being overcooked, while the men focus on their screens. The advertisement then returns to the kitchen scene and the male responds to the question.

THE COMPLAINT

A sample of comments which the complainants made regarding this advertisement included the following:

- This ad glorifies gambling and gambling addiction. This ad is always shown during family friendly hours exposing children to gambling and making it look like a great life choice.
- This ad strongly promotes the easy access to gambling, suggesting that is more important than enjoying your surrounds and company.
- If people really acted this way it would be classed as a serious addiction!
- This ad implied that it would be 'fun' and 'sociable to lie to your partner about gambling addiction. It glamorises gambling as a kind of pleasure that one could indulge in over a weekend, but come home unsuspected. If someone had just such a need to get online for a whole weekend (as is implied by the ad), and then conceal that from their partner (as is implied by the ad), they would be suffering a serious gambling addiction. It is dangerous and offensive that a gambling company would glamorise this as 'something to get away with', made even worse by the choice of soundtrack 'I will always love you'. This is a horrifying, glamorised and false account of the lies a gambler tells themselves and their family. The 'lost' weekends are a trauma and not a joy for both the problem gambler and the family, and [the] fact that this ad seeks to glamorise and disguise. Shocking.

THE BOARD'S DETERMINATION

The Board found, by majority, that the Tabcorp advertisement entitled 'Live Vision 30', first shown on 2 October 2016, breached section 2.8 of the AANA Wagering Advertising and Marketing Communication Code (Wagering Code). The Board did not find a breach of section 2.6 of the Ethics Code. That finding was not challenged on the application to the Independent Reviewer.

The Board noted that preconditions to the exercise of its jurisdiction were met. Tabcorp is a company licensed in a state or territory of Australia to provide wagering products or services to customers in Australia and the product advertised is a wagering product or service. The

provisions of the Wagering Code apply.

Wagering Code section 2.8

The Board considered section 2.8 of the Wagering Code which provides: ‘Advertising or Marketing Communication for a Wagering Product or Service must not portray, condone or encourage excessive participation in wagering activities’.

The Board noted there was no definition of a ‘wagering activity’ but considered that the depiction of people on a camping trip ‘spending their time wagering and watching racing on their mobile devices’ can reasonably be interpreted as being engaged in a wagering activity in the context of an advertisement for a wagering product.

The Board next considered whether the advertisement depicted ‘excessive’ participation in wagering activities. By majority the Board considered that as the men were oblivious to what was happening around them, such as fish jumping and the barbequed fish burning, and watching racing on their mobile devices while in bed, that the overall suggestion was that the wagering had priority over other activities during the men’s weekend. The Board found this was excessive participation in wagering activities and breached section 2.8 of the Wagering Code.

THE ADVERTISER’S RESPONSE

Tabcorp, in its application for review, noted the Board’s decision, and suspended the advertisement. Nonetheless, Tabcorp maintained that the advertisement did not breach the Wagering Code and submitted that there were substantial flaws in the Board’s determination which was against the weight of the evidence for the following reasons.

Wagering Code section 2.8

1. Interpretation of ‘wagering activities’

The activities do not amount to ‘wagering activities’ because:

- a. the advertisement does not show the men actively placing a bet or engaging in wagering or gambling.
- b. the advertisement simply depicts the men reviewing the racing Form, cheering on a live race and watching replays of that race on their TAB ‘app’.
- c. The Board’s interpretation of the first scene of the advertisement is based purely on the assumption that if a person reviews the Form, then they must also be placing bets, which is not necessarily the case.
- d. The advertisement is designed explicitly to promote the racing and Form options on the TAB ‘app’ and concludes with the message ‘No one has more racing action than the TAB App – Form - Live Action – Replays’.

2. Portrayal of ‘excessive participation’ in wagering activities

The activities do not amount to ‘excessive participation’ because the advertisement does not depict ‘wagering activities’ for the reasons listed earlier and logically therefore it cannot portray ‘excessive participation’ and is against the weight of the evidence.

3. Alternative interpretation of the advertisement

If the Independent Reviewer finds that the activities are ‘wagering activities’, Tabcorp submits that the only alternative interpretation is that adopted by the minority of the Board,

namely, that the portrayal of a 'one off boys weekend' does not amount to 'excessive participation' because:

- a. It could not reasonably be asserted that the men were portrayed as placing more than one bet, or that the placement of one bet by a group of men on a one off camping trip could be considered 'excessive'.
- b. The advertisement does not fall within one of the situations in the Practice Note to the Wagering Code since it did not depict people 'wagering beyond their means', 'wagering taking priority' in their lives, or 'prolonged and frequent wagering to improve a participant's skill in wagering'.
- c. The advertisement portrayed other activities in which the men were engaged including cooking on the barbeque, toasting a marshmallow and was designed humorously to suggest that the use of the TAB 'app' was a distraction.

INDEPENDENT REVIEWER'S RECOMMENDATION

The grounds on which a decision of the Board may be reviewed are:

- Where new or additional relevant evidence which could have a significant bearing on the determination becomes available. An explanation of why this information was not submitted previously must be provided.
- Where there was a substantial flaw in the Board's determination (determination clearly in error having regard to the provisions of the Code, or clearly made against the weight of evidence).
- Where there was a substantial flaw in the process by which the determination was made.

The complainant nominated ground (2), namely that there was 'a substantial flaw in the Board's determination', specifically: 'The determination was made against the weight of evidence before the Board'.

To consider that issue, I have accepted the application for review.

Section 2.8 of the Wagering Code

1. Interpretation of 'wagering activities'

The advertisement is an 'advertising or marketing communication' since it is designed to draw the attention of the public to a product, the Tabcorp 'app', which it is designed to promote directly or indirectly.

The Board noted there was no definition of a 'wagering activity' but considered that the depiction of people on a camping trip 'spending their time wagering and watching racing on their mobile devices' presumably showing the Tabcorp 'app', can reasonably be interpreted as being engaged in a wagering activity in the context of an advertisement for a wagering product.

To 'wager' in the context of 'wagering activity' is '2. The act of betting' (Macquarie Concise Dictionary (5th edn, 2009) 1416). Tabcorp denied that there was any 'direct portrayal of gambling or wagering'. That is the case. Nonetheless, the depiction is implied.

The advertisement depicts the men referring to the Form on the 'app'. This reference,

together with the sideways glance of the man shown in a small group suggesting his anticipation - 'now let's see what will be the outcome' - coupled with the intensity of the men's excitement while watching the horse race, implies that the men's interest is heightened because they have used the 'app' to bet.

The reviewer finds no 'substantial flaw' in the finding of the Board that the advertisement depicts a wagering activity.

2. Portrayal of 'excessive participation' in wagering activities

The Board next considered whether the advertisement depicted 'excessive participation in wagering activities'. Tabcorp's submission was that as a matter of logic and of semantics, if the activities were not 'wagering activities' nor could they be 'excessive'.

That argument does not succeed if the Board's finding, agreed with by the reviewer, that the activities were 'wagering activities' is accepted when the reviewer's recommendations are returned to the Board for consideration.

3. Alternative interpretation of the advertisement

Tabcorp argued that, if the Independent Reviewer agreed with the Board's interpretation that the advertisement did depict 'wagering activities', then the only interpretation is that the depiction did not amount to excessive participation. This view was in line with that of the minority of the Board, namely, that an advertisement depicting a one-off boys' weekend could not be regarded as excessive participation and that it could not reasonably be asserted that the men's placement of one bet, if that occurred, was excessive.

The emphasis in the Code is on 'excessive participation'. A one-off activity can be excessive in its lack of moderation. Whether the regularity or frequency of the participation is an indicator of what is 'excessive' is not clear from the Practice Note and it would be useful for the AANA to clarify this issue in its next revision to the supporting documentation to the Wagering Code.

Tabcorp relied in its submission that the advertisement did not portray the men being involved in any of the examples of 'excessive participation' in the Practice Note to the Wagering Code. There is no argument that the advertisement did not indicate that the participants were 'wagering beyond their means' or that it portrayed 'prolonged and frequent wagering to improve a participant's skill in wagering'.

The issue is whether the advertisement shows wagering activities which were 'taking priority' in the lives of the men during the weekend. It is the immoderate amount of attention on the occasion which is the focus.

The men's ignoring of the fish rising, and the barbequed fish burning, coupled with the watching of the replay of a race, including while in bed, do suggest that the wagering activity was the principal focus of the men's lives during their trip. So the wagering activity being promoted by the advertisement was an activity which had priority in their lives on this occasion.

Tabcorp maintains that the advertisement is intended to promote the message that 'No one

has more racing action than the TAB App' in a light-hearted and humorous manner'. Ignoring the fish and burning the fish can be taken to be humorous. Nonetheless, the humour did not outweigh the apparent intensity of the men's participation in wagering activities to the exclusion of attention to the surroundings.

This was to portray a wagering activity which involved excessive participation. It did not necessarily indicate an addiction since there is no suggestion that this was a regular event. Nonetheless, in my opinion, it was open to the Board to find that the wagering activity was excessive during this trip due to the intensity of the focus of the men on the wagering activity. That intensity indicated that the activity had priority over other activities during the trip.

I find that there is no substantial flaw in the finding of the majority of the Board in relation to section 2.8 of the Wagering Code.

CONCLUSION

In these circumstances, I recommend that the original determination of the Board be confirmed.

THE DETERMINATION ON REVIEW

ADVERTISER'S RESPONSE TO IR DETERMINATION