



Case Report

1	Case Number	0456/17
2	Advertiser	Sportsbet
3	Product	Gaming
4	Type of Advertisement / media	TV - Free to air
5	Date of Determination	25/10/2017
6	DETERMINATION	Dismissed

ISSUES RAISED

- 2.1 - Discrimination or Vilification Religion
- 2.6 - Health and Safety Within prevailing Community Standards
- 2.8 - Excess participation Condoned or imply excess participation

DESCRIPTION OF THE ADVERTISEMENT

The advertisements feature a group of men at the race track singing and talking about the betting app. The voiceover refers to the season as 'Puntmas.'

THE COMPLAINT

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

I am objecting and offended by the ad using a Christian celebration Christmas. It belittles the Christian believe. ("Christmas" is a shortened form of "Christ's mass") For them to use it in a gambling ad reaches new lows in the gambling industry. And to use Christmas lyrics in the ad also belittles the true Christmas spirit.

This is BLASPHEMY. Calling their racing crap Puntmas. Using Christmas images INCLUDING a donkey BLASPHEMY

Regrettably, we live in an era where it has become acceptable to denigrate our Christian heritage. This advertisement deliberately tries to associate gambling with the spirit of Christmas. No doubt gambling will ruin Christmas for many families this year. I find this ad to be in very poor taste.

To associate betting with one of the holiest days in the Christian calendar is beyond offensive.

I find this very offensive.

I find this highly offensive and is blasphemous! Not only this but these betting organisations are luring young people in to forming a habit of betting on a regular basis and getting them hooked on the habit. These apps they offer as a free download are too easy to use for our young people and these ads should be banned.

I find it very offensive that they use the word "Punt-mas"... Taken from the word Christmas...! Christmas Carols are also sung, with the words changed...!

I think it is offensive to lessen and cheapen a religion celebration, such of one like Christmas...!

I have been directly impacted by gambling ... The times that these ads are put on are when children are home and listening to the radio etc. I am appauled that the Australian Governemnt allows ads like this to entise gambling addicted people to do further damage to their lives.

I DO NOT wish my family to be exposed to advertisements that encourage gambling and bring back memories of what would not have occured had their Granfather not been addicted to gamnling.

I now refuse to watch the television or listen to those ads on radio stations. VERY UPSET!!!

These ads are on repeatedly during a time slot that is inappropriate when children are watching tv and they should be limited to times when children are less likely to be watching.

My husband and I find these kinds of ads to be offensive as gambling is as bad as cigarette advertising. It encourages people to bet with money they dont have.

I am offended that they relate Christmas and gambling, I especially don't want my children to recognise the tune and start to relate Christmas and gambling or even worse start singing the song. The ad is also shown way too often and is on constantly during the day where it is seen mostly by families and children

I find the replacement of the word "Christ" in Christmas with the word "punt" in a campaign to promote gambling offensive. I suspect there are many people (religious and non-religious) who would share this view.

This ad appears to be a hook for certain personality types to try gambling "risk free".

I am sick of seeing betting ads played during times when lots of children would be watching. In general, there are a lot more betting and gambling ads being played. Setting a bad example for kids

I feel we are being saturated with gambling ads, this encourages gambling even more offering the opportunity to back out at the last minute. Also what is Puntmas? Gambling tears families apart Christmas is a time for famies to come together.

I was horrified to see that Sportsbet have now released a new advertisement where a bet can

be cancelled during the race and Ben Johnson appears at the very end of it where the voice over says Everyone's on it hey Ben, followed by his laughter. How can they possibly think this is any different to what they've just been proven as inappropriate in their previous ad (Case ID 0234/17) that was removed as a result of their promotion of a drug cheat, implying that it's ok to be a drug cheat, and that they can be rewarded by being paid to do advertisements. Please remove this advertisement as well.

The use of the word Christmas as Puntmas. It is offensive to me as a Catholic and disrespectful to all who. Believe in Christmas and it also goes against what I stand for as a Catholic. It also sounds like another word in the English language when it is said on the ad. A certain part of the female anatomy. It disgusted me.

I find it offensive that this advertising uses the slogan 'Puntmas' rather than 'Christmas' and also uses the melody and changes the words to a well known Christmas carol 'On the First Day of Christmas' it is offensive to the religious and festive occasion and more so that children are exposed to the advertising the times of day it is broadcast . It is completely an acceptable to expose children to gambling advertising in any context but even more so when using a popular Christmas carol and a play on the word 'Christmas'

As a Christian using the word PUNTMAS in the place of Christmas is offensive.

Gambling promoted in the name of a Christian religious celebration.

THE ADVERTISER'S RESPONSE

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

The Complaints

The essence of the Complaints assert that:

'It is offensive to me as a Catholic and disrespectful to all who. Believe [sic] in Christmas and it also goes against what I stand for as a Catholic. It also sounds like another word in the English language when it is said on the ad. A certain part of the female anatomy. It disgusted me.'

'Religious discrimination - the use of a well known Christian Christmas carol (Deck the Halls) to promote horse racing/gambling when it has nothing to do with the Christmas celebration.'

'it is offensive to the religious and festive occasion and more so that children are exposed to the advertising the times of day it is broadcast'

'As with the previous Ben Johnson advert which was banned, this is completely inappropriate to make light of a drug cheat for such trivial advertising purposes'

'was offensive to hear Sportsbet change-out Christ's name from the title of Christmas and then replace it with the gambling term of punt.'

The ASB has identified sections 2.1, 2.5 and 2.6 of the AANA Code of Ethics (Code) as the sections which may have been breached based on the Complaints. The Code states:

2.1: Advertising or Marketing Communications shall not portray people or depict material in a way which discriminates against or vilifies a person or section of the community on account of race, ethnicity, nationality, gender, age, sexual preference, religion, disability, mental illness or political belief.

2.5: Advertising or Marketing Communications shall only use language which is appropriate in the circumstances (including appropriate for the relevant audience and medium). Strong or obscene language shall be avoided.

2.6: Advertising or Marketing Communications shall not depict material contrary to Prevailing Community Standards on health and safety.
Sportsbet's response to the Complaints

Sportsbet has considered the Complaints and considers that the Advertisement does not breach section 2.1, 2.5, 2.6, or any other section of the Code for the reasons outlined below.

2.1 – Discrimination or Vilification

Sportsbet rejects that the Advertisements in any way breach section 2.1 of the Code. In our view, the Advertisements plainly do not “discriminate against” nor “vilify” any person or section of the community on account of religion (or on any other basis).

To discriminate against or to vilify are both very serious matters. The Oxford and Collins dictionaries support our contention that the Advertisement does breach section 2.1 of the Code by reason that they provide:

to “discriminate against” is to “make an unjust or prejudicial distinction in the treatment of different categories of people” (Oxford Dictionary) or to “single out a particular person, group, etc., for special...disfavour, often because of a characteristic...” (Collins Dictionary); and

to “vilify” is to “speak or write about in an abusively disparaging manner” (Oxford Dictionary) or to “revile with abusive or defamatory language; malign” (Collins Dictionary).

The Advertisements do neither of those things – they do not even identify or speak out about any particular religion, let alone in a disparaging manner.

Instead, the Advertisements merely attempt to demonstrate in a light-hearted manner that the Spring Racing Carnival is like the Christmas of the racing year, as it is the highlight of the racing calendar with the most prestigious racing events. References to Christmas in this context is common parlance, such as ‘All your Christmases have come at once’ and ‘It’s like Christmas every day’.

Playing on the Christmas theme, the Advertisements promote that Sportsbet has a range of products and special offers that it is ‘giving’ to customers to use for the Spring Racing Carnival.

Simply using a popular holiday name and interchanging the first half of the name with the word 'punt', which is core to Sportsbet's business and the offerings that the Advertisements describe, cannot reasonably be viewed as discriminating against, or vilifying, people on account of religion.

Although some viewers may not find the Advertisement as humorous as some others might (or at all), it certainly does not go so far as to 'unjustly or prejudicially' treat any religion, nor does the Advertisement 'abusively disparage' or 'revile' any religion.

Further, the Advertisements are shown in strict compliance with regulatory requirements for when wagering advertisements are able to be shown. The fact that some pockets of the community object to the ability for wagering companies to advertise their products at all is entirely irrelevant in considering whether or not it breaches section 2.1 of the Code.

2.5 – Strong or obscene language

Sportsbet rejects that the Advertisements in any way breach section 2.5 of the Code. There is no strong or obscene language or even any suggestion of, or likeness to, any strong or obscene language in the Advertisements.

2.6 – Health and Safety

Sportsbet rejects that the Advertisements in any way breach section 2.6 of the Code. That Sportsbet has engaged a well-known celebrity to help promote its products is not in any way contrary to Prevailing Community Standards on health and safety.

The Advertisements are entirely different from the advertisements that were the subject of complaint reference numbers 0234/17, 0235/17, 0236/17 and 0237/17, which the ASB upheld (Android Advertisements). As such, the ASB's upholding of complaints relating to the Android Advertisements should not bear upon its decision regarding the Complaints.

In that instance, the ASB found that the Android Advertisements conveyed 'a message that there is no negative side to drug use and cheating and could be seen as a suggestion that there are benefits to gain from cheating or from behaviour that will enhance your performance' and as such breached section 2.6 of the Code.

In this instance, through a mere cameo appearance from Mr Johnson and without any reference to sporting achievements or depiction of sporting success, there can be no reasonable interpretation that the Advertisements convey any message in relation to drug use, let alone that drug use enhances performance without a negative side effect.

As such, with respect, there is clearly no depiction of any material that could reasonably be interpreted as depicting material contrary to Prevailing Community Standards on health and safety.

Conclusion

Sportsbet believes that the Complaints lack foundation and should be dismissed.

Further response - 24 Oct 2017

We refer to your letter dated 18 October 2017 and the Complaints mentioned above regarding Sportsbet's Puntmas and The Fold advertisements (Advertisements), which are attached in a digital file. We also refer to our earlier letter dated 12 October 2017 in relation to previous complaints regarding the Advertisements (Initial Response).

The Complaints

The essence of the Complaints assert that:

'I am appauled [sic] that the Australian Governemnt [sic] allows ads like this to entise [sic] gambling addicted people to do further damage to their lives.'

'Sportsbet has replaced the word Christ (as in Christmas) with the word Punt. This is terribly insensitive and quite frankly stupid and hurtful to a lot of people.'

'I do believe that respect should be shown towards people beliefs especially regarding bigger seasonal event such as christmas and easter'.

'It encourages people to bet with money they dont [sic] have.'

'The ad is also shown way too often and is on constantly during the day where it is seen mostly by families and children'

'This ad appears to be a hook for certain personality types to try gambling "risk free"'

The ASB has identified sections 2.1, 2.5 and 2.6 of the AANA Code of Ethics (Code) as the sections which may have been breached based on the Complaints. The Code states:

2.1: Advertising or Marketing Communications shall not portray people or depict material in a way which discriminates against or vilifies a person or section of the community on account of race, ethnicity, nationality, gender, age, sexual preference, religion, disability, mental illness or political belief.

2.5: Advertising or Marketing Communications shall only use language which is appropriate in the circumstances (including appropriate for the relevant audience and medium). Strong or obscene language shall be avoided.

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

The ASB has also identified sections 2.6 and 2.8 of the AANA Wagering Advertising & Marketing Code of Conduct (Wagering Code) as the sections which may have been breached based on the Complaints. The Wagering Code states:

2.6: Advertising or Marketing Communication for a Wagering Product or Service must not portray, condone or encourage participation in wagering activities as a means of relieving a person's financial or personal difficulties.

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

Sportsbet's response to the Complaints

Sportsbet has considered the Complaints and considers that the Advertisement does not breach section 2.1, 2.5, 2.6 or any other section of the Code, or section 2.6, 2.8 or any other section of the Wagering Code for the reasons outlined below.

Sections 2.1, 2.5 and 2.6 of the Code

Sportsbet rejects that the Advertisements breach sections 2.1, 2.5 and 2.6 of the Code and repeats its earlier arguments set out in the Initial Response.

*2.6 – Depict Wagering as a means of relieving a person’s financial or personal difficulties
Sportsbet rejects that the Advertisements portray, condone or encourage participation in wagering activities as a means of relieving a person’s financial or personal difficulties.*

The Advertisements do not depict any financial or personal difficulties, let alone depict wagering as a means for relieving such difficulties. Instead, the Advertisements simply promote a selection of Sportsbet’s current products and promotions that are available.

As such, in Sportsbet’s view there can be no reasonable argument that the Advertisements portray, condone or encourage participation in wagering activities as a means of relieving a person’s financial or personal difficulties.

*2.8 – Excess participation in wagering activities
Sportsbet rejects that the Advertisements portray, condone or encourage excessive participation in wagering activities.*

The Advertisements do not encourage participants to wager beyond their means or reward participants for any prolonged or frequent wagering. The Advertisements also do not, as the Complaints assert, encourage people to bet with money they do not have.

Instead, the Advertisements promote a selection of the current products and promotions that are available. Other than showing an example of how these products can be used, there is no depiction of any wagering in the Advertisements, let alone excessive wagering.

Further, The Fold and Power Play products that feature in the Advertisements have daily limits that apply, which is specified in the Advertisements.

Conclusion

Sportsbet believes that the Complaints lack foundation and should be dismissed

THE DETERMINATION

The Advertising Standards Board (“Board”) considered whether this advertisement breaches Section 2 of the AANA Code of Ethics (the “Code”) or the AANA Wagering Advertising and Marketing Communication Code (Wagering Code).

The Board noted the complainants concerns that the advertisements are offensive to Christians by mocking Christmas, uses bad language and encourages an unhealthy level of interest in gambling.

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 noted there are four advertisements in the series currently being aired on television. At the conclusion of each advertisement the brand name "Sportsbet" appears on screen and the words "Merry Puntmas Spring 2017." The versions are: The Fold – 15 sec (1), Turnbull Stakes Day – 15 sec(2), The Fold – 30 sec (3), and Racing specials – 30 sec (4).

Each of the versions uses the same voiceover with describing different functions within the app. The Board noted the advertisements included a group of men singing or humming Christmas carols and at the race track standing by a mantle. Features of the app include 'the fold' which gives the functionality to cancel your bet. The 30 second versions show examples of why a customer might like to cancel a bet after the race has started.

The Board noted that in more than one complaint it was difficult to determine which particular advertisement was being referred to. The Board noted that the overall theme of the complaints covered similar issues regarding being offensive to Christians and the replacement of the word Christ with the word Punt. The Board noted that generally the complainants concerns that the advertisements encourage people to gamble.

The Board first considered whether the advertisement complied with Section 2.1 of the Code which requires that 'advertisements shall not portray or depict material in a way which discriminates against or vilifies a person or section of the community on account of race, ethnicity, nationality, gender, age, sexual preference, religion, disability, mental illness or political belief.'

The Board noted the Practice Note to Section 2.1 of the Code which provides the following definitions:

"Discrimination – unfair or less favourable treatment
Vilification – humiliates, intimidates, incites hatred, contempt or ridicule".

The Board noted it had previously considered an advertisement for Foxtel (0481/10) that referred to FOXMAS instead of Christmas. In that case the Board considered that

"... the reference in the advertisement to FOXMAS instead of Christmas is a play on words closely related to XMAS which is commonly used as an abbreviation for the word Christmas. The Board considered that the use of the term "Foxmas" would be offensive to some people with strong Christian beliefs. However the Board considered that the use of this term in the manner depicted in the advertisement does not denigrate Christianity or Christians and would be seen by most people as a humorous play on words with no reflection on the beliefs underpinning the words. The Board determined that the use of the term FOXMAS in this advertisement did not discriminate against or vilify any section of the Community and that the advertisement did not breach section 2.1 of the Code."

The Board noted that many members of the community consider Christmas as a cultural holiday more so than a religious one and though Christmas has significant meaning to some, the use of ‘Puntmas’ in the context of a promotion of a gambling product may be considered tasteless but such a connection of words does not denigrate Christianity or Christians.

The Board noted that the advertisements are intended to highlight the Spring racing Carnival. Similar to 0481/10 in this case, the Board determined that the use of the term PUNTMAS in these advertisements did not discriminate against or vilify any section of the Community and that the advertisement did not breach section 2.1 of the Code.

The Board then considered Section 2.5 of the Code which states: “Advertising or Marketing Communications shall only use language which is appropriate in the circumstances (including appropriate for the relevant audience and medium). Strong or obscene language shall be avoided”.

The Board noted the complainants concerns that the use of the word ‘Punt’ sounds very similar to the obscenity ‘Cunt.’

The Board noted that the word punt was used to replace Christ in the word Christmas and noted that though the sound could be likened to something else. There is no suggestion that the word is intended to be anything else and that in an advertisement for a betting app there is a clear association to the word Punt.

The Board considered that the advertisement did not use strong or obscene language and did not breach section 2.5 of the Code.

The Board lastly 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 considered whether this advertisement is a depiction of ‘wagering activities’ and noted that there is no definition of a ‘wagering activity.’

The Board noted the decision of the Independent Reviewer in Tabcorp (0447/16) where it was determined that a depiction of people ‘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 Board considered the current advertisement and considered that, similar to 0447/16, the depiction of a person using a mobile device, in the context of an advertisement for a wagering service and accompanied by the voiceover describing the features of the product can be reasonably interpreted as a depiction of a wagering activity.

The Board then considered whether the advertisement portrayed ‘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:

- 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.

Whilst the Practice Note lists three examples the Board considered that this did not restrict the application of Section 2.8. The Board considered that the depiction in the advertisement did not meet any of the examples set out in the Practice Note, so then considered whether the depiction would be considered as ‘excessive’ taking into consideration the definition of excessive.

The Board noted the definition of ‘excessive’ (Macquarie Australian Encyclopedic Dictionary 2006) as being ‘exceeding the usual or proper limit or degree; characterised by excess.’ The Board also noted that ‘Excess’ includes the definition of ‘going beyond ordinary or proper limits.’

The Board noted it had previously upheld a complaint about depicting excessive participation in wagering activities in case 0447/16. Board noted in that instance that the Board’s determination had been subject to an Independent Review where the Reviewer found that “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.”

In that case a group of men were seen camping and when one man was asked about his weekend he reflected back on all the opportunities the group had taken to bet and watch horse racing and that the result of this was to the detriment of other activities such as fishing and cooking a bbq.

In the current advertisement the Board noted the group of men are all well dressed and are clearly at a race track and track surrounds. The Board noted there are references to specific tracks such as Flemington and Randwick and an image of a jockey on a horse. The Board noted that the overall impression is that the men are attending an event at a race track.

The Board considered that based on the advertisement, it is not possible to tell how often the men engage in wagering activities and the most likely interpretation is that they are attending a race meeting throughout the Spring Carnival.

The Board noted the Practice Note states that “simply depicting regular wagering, for example as a routine weekend pursuit during a sporting season, does not equate to portraying excessive participation.”

The Board considered that in the current advertisements the depiction of a group of men at a race track dressed for a special event is not condoning or encouraging excessive participation, and in the Board’s view the message taken from the promotion is not a portrayal of excessive

participation in wagering activities.

The Board determined that the actions of the men are not a depiction that breaches Section 2.8 of the Wagering Code.

Finding that the advertisements, did not breach the Code or section 2.8 of the Wagering Code, the Board dismissed the complaints.