



## Case Report

1	Case Number	0462/17
2	Advertiser	NEDS
3	Product	Gaming
4	Type of Advertisement / media	TV - Free to air
5	Date of Determination	25/10/2017
6	DETERMINATION	Dismissed

### ISSUES RAISED

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

### DESCRIPTION OF THE ADVERTISEMENT

The television advertisement depicts a male waiting in line at the supermarket to buy milk. He is next in line but sees an older woman approaching with a full trolley and motions for her to go in front of him. While the elderly lady slowly figures out how to scan her groceries using the supermarket self service check-out he decides to make the most of this wait time and entertain himself by having a bet on his phone.

### THE COMPLAINT

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

*My objection to all of the ads is the singular messaging, which overtly promotes and encourages problem gambling; portraying a disconnection from the real world, work and relationships as positive. In each case, when the protagonist in the ad disengages from their surroundings to bet - often using subterfuge to do so - the voiceover excitedly proclaims 'It's time to bet!'*

*It promotes gambling addiction as the "hero" of each ad is clearly a gambling addict!*

*The underlying messages is; gambling is more important than honesty in relationships with wives, partners, family members and more important than accountability and integrity in the*

*work place.*

*As well as sending a very bad message about inappropriate importance of gambling in a man's life the advertising is highly misogynist.*

*There are multiple adverts promoting the gambling app - they all really casualise gambling and make it seem like a fun pastime when you're waiting at a checkout,*

*Its promoting gambling in an unhealthy way and neither example had warnings about moderation.*

## **THE ADVERTISER'S RESPONSE**

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

*Issues Raised to Date:*

*Section 2.6 of the AANA Code of Ethics*

*2.6 - Health and Safety Within prevailing Community Standards*

*Advertisers Response:*

*The advertisement depicts a scenario whereby the male waits patiently in line, while the elderly lady in front of him, slowly figures out how to scan her groceries using the supermarket self service check-out.*

*Rather than complaining, being rude or telling the old lady to hurry up, he decides to make the most of this wait time and entertain himself by having a bet on his phone.*

*The advertisement is clearly intended to be humorous and light-hearted and not in any way suggesting that people gamble in an unhealthy way or at inappropriate times.*

*Furthermore, the male in the advertisement is not depicted as gambling on his phone in a way which could be construed as taking priority over other commitments in his life, or in any way which could pose a health and safety risk at the supermarket or otherwise gambling in an unhealthy way in accordance with prevailing Community Standards.*

*Section 2.6 of AANA Wagering Advertising & Marketing Communication Code*

*Must not depict wagering as a means of relieving a persons financial or personal difficulties*

*The advertisement depicts a scenario whereby the male waits patiently in line, while the elderly lady in front of him, slowly figures out how to scan her groceries using the supermarket self service check-out.*

*The male is not depicted in the advertisement as having any kind of financial difficulties or gambling on his phone in a way which could be construed as an alternative way of earning an income or as a viable alternative to a job.*

*Section 2.8 of AANA Wagering Advertising & Marketing Communication Code*

*Must not portray, condone or encourage excess participation in wagering activities*

*Advertisers Response:*

*Given that the man's time is already being taken up, waiting for the elderly lady in front of him to finish scanning her groceries at the self-service checkout, he is depicted in a humorous and light-hearted manner to be cleverly using that opportunity to entertain himself on his phone, by having a bet.*

*The man in the advertisement is not depicted as gambling in a way which could be construed as taking priority over his other commitments or responsibilities.*

*The sole intent and unequivocal message of the advertisement is to suggest that consumers can take advantage of any down time, quiet time or wait time they may have (ie. time which would otherwise be wasted) to entertain themselves and have a bet on their phone.*

*Therefore, it is submitted that the advertisement does not portray, condone or encourage excess participation in wagering activities.*

## **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 complainant’s concerns that the advertisement is encourages gambling, treating the activity as something to pass the time.

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 advertisement is part of a series and that this particular advertisement “supermarket” features a man at the checkout of a supermarket with one bottle of milk under his arm. The man allows an older woman with a full shopping trolley to go ahead of him in the queue. As she commences scanning her items, he turns to his phone. The brand name “NEDS” appears on screen and the words “it’s time to bet.”

The Board noted the complainants’ concerns that the advertisement is promoting gambling in an unhealthy way.

The Board noted that that advertisement shows the man allowing a woman with a very full trolley of groceries to use the self-serve checkouts ahead of him, extending his time in the queue and in turn the time of other shoppers as well.

The Board considered that the reason behind the man’s gesture is to extend the time available to him to engage with the brand. The Board noted that overall, the portrayal of the man and his generosity is lighthearted and does not amount to a depiction that would be considered contrary to prevailing community standards on health and safety by encouraging gambling.

The Board noted that gambling and wagering products are legally allowed to be advertised and the Board can only consider the content of the advertisement. The Board noted that some members of the community would prefer that this type of advertising not be allowed but in the Board’s view the actual content of the advertisement does not depict material that is contrary to Prevailing Community Standards on health and safety and did not breach section 2.6 of the Code.

The Board considered that the current advertisement is an advertisement for NEDS, an operator licenced to provide wagering products or services to customers in Australia and that 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 then 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 phrase “it’s time to bet” 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 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.

The Board noted that “the advertisement was 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.”

In addition, the Board noted it had upheld a complaint about excessive participation in wagering activities in a Lottoland case (0552/16) where a man was seen hiding under a table in order to place a bet.

In that case, the majority of the Board considered that:

“the depiction of John hiding in order to use his phone to access a wagering website is suggestive of wagering being something secretive that should be hidden from family and or friends. The Board noted that the person using the product has isolated himself from the family and considered that this is a depiction of a person who allows wagering to become a priority in their life and that in accordance with the AANA Practice Note to the Wagering Code, this is an example of a depiction of excessive participation in wagering activities.”

In addition, the Board noted it had upheld complaints about excessive participation in wagering activities in a NEDS case (0459/17) where workers on a building site were seen to be unable to work because of their choice to bet.

In that case and following considerable discussion, the majority of the Board considered that

“...the advertisement shows all the workers on their phones outside the site and then inside the building site as well. The Board considered that the overall impression was that work on the building site had ceased and all workers were more preoccupied with gambling rather than doing their paid job.

The Board considered that the depiction of the men on the work site who are fabricating reasons not to work is a depiction of a group of people who have allowed wagering to take priority over their work.”

The Board noted it had dismissed complaints about a similar advertisement for the same advertiser (case 0460/17) where a man was shown betting while his partner was clothes shopping. In that case, the Board considered that “...it is not possible to tell how often the

man places a bet and the most likely interpretation is that he has found a way to occupy himself in that instance.”

Similarly, in the current case, the Board noted that the man extends the time he is waiting in the queue at the supermarket by politely letting an older woman with a large trolley of groceries ahead of him, and of the other people waiting. The man then uses this time he has waiting for the woman to complete her shopping by using his device for the purpose of betting. The Board considered that it is possible to interpret the advertisement as the man deliberately extending his time in the queue for the purpose of betting or he is being polite. The Board considered that on either interpretation of the man’s behaviour, it is not possible to tell how often the man engages in wagering activities and in the Board’s view the depiction of wagering while waiting in a queue is not a depiction that is beyond an ordinary occurrence and is not excessive.

The Board considered that the depiction is not condoning or encouraging excessive participation, and in the Board’s view the context of the advertisement does not amount to a portrayal of excessive participation in wagering activities.

The Board considered the advertisement does not portray excessive participation in wagering activities and does not breach Section 2.8 of the Wagering Code.

Finding that the advertisement did not breach the Code of Ethics or the Wagering Code, the Board dismissed the complaints.