



## Case Report

1	Case Number	0475/17
2	Advertiser	NEDS
3	Product	Gaming
4	Type of Advertisement / media	Internet
5	Date of Determination	25/10/2017
6	DETERMINATION	Upheld - Modified or Discontinued

### ISSUES RAISED

- 2.1 - Discrimination or Vilification Gender
- 2.8 - Excess participation Condone or imply excess participation

### DESCRIPTION OF THE ADVERTISEMENT

- Internet advertisements of 5 different versions showing men using the Neds App.1. Man helping partner clothes shopping
- 2. Man in supermarket lets lady go first with her shopping
  - 3. Man pretends his work has called to avoid dinner
  - 4. worksite shows tradesmen unable to work
  - 5. man pushes all the buttons in the lift

### THE COMPLAINT

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

*The AANA Code of Ethics 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. As noted above our view is that such ads clearly denigrate women. We also note the NT Code of Practice for Responsible Online Gambling 2016 (the "Code") states that some of the negative impacts of gambling are: From the perspective of family friends of a problem gambler, they may experience:*

- *neglect by the gambler*
- *the gambler missing family functions or other obligations*

Employers may face issues with a problem gambler employee including: • poor performance These Neds advertisements encourage the precise behaviour that are signs of problem gambling, in doing so they normalise the behaviour and potentially allow a gambler to justify such conduct. We note the Code also states: “Advertising and promotions are to be delivered in an honest and responsible manner with consideration given to the potential impact on people adversely affected by gambling” It is hard to conceive that advertisements that clearly encourage deception and make light of the negative impacts of gambling could be considered honest or responsible and or consistent with the Code. While we note that all of the ads have the warning message “THINK! About your choices. Think of the people who need your support. Gamble Responsibly” it is hard to imagine ways the ads could be more inconsistent with this message. The contempt and lack of respect shown for women is out of step with community values and totally contrary to “Think of the people who need your support”. We request: 1. Confirmation that these ads are inappropriate; 2. Advice as to remedial action to remove these advertisements (from all media) with haste, and mitigate the harm. 3. That future Neds ads are proactively monitored 4. Further sanctions that are within your regulatory powers We also request that this complaint be actioned with urgency, given that the advertisements are being heavily aired in the lead up to the Spring Racing season. We look forward to receiving your response to our concerns shortly.

## **THE ADVERTISER’S RESPONSE**

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

*Response to 0475/17 – Website/YouTube advertisements*

### **1. CONSTRUCTION SITE**

*Section 2.1 of the AANA Code of Ethics*

#### **2.1 Discrimination or Vilification of Gender**

*The advertisement depicts a scenario whereby all the construction workers/tradesmen on site are sitting around having a ‘smoko’ break waiting for other work to be finished on site by other tradesmen.*

*The site supervisor is depicted as being genuinely concerned and embarrassed at the lack of progress on the site when the female client shows up on site.*

*The supervisor does not fob the client off or discard her concerns, but rather, he hurries off and begins walking around the site, asking the various tradesmen asking why things have not been done.*

*The depiction of the client as a female is incidental and there is nothing in the advertisement that could be construed as being a situation where the site foreman or the tradesmen are taking advantage of, or vilifying the female client on account of her gender.*

*Section 2.1 of the AANA Code of Ethics*

#### **2.1 Discrimination or Vilification of Occupation**

*The advertisement is clearly intended to be humorous and light-hearted, whereby all the construction workers/tradesmen on site are sitting around having a ‘smoko’ break during their downtime, while they are waiting for other work to be finished on site by other tradesmen (a common situation on a building site).*

*The tradesmen are not depicted as being lazy, neglecting their work duties or in any other way which could be construed as a discrimination or vilification of their occupation*

*Section 2.6 of the AANA Code of Ethics*

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

*2.6 - Health and Safety Unsafe behaviour*

*2.6 - Health and Safety Within prevailing Community Standards*

*Advertisers Response:*

*This advertisement does not depict any drinking or smoking on the construction site and all workers are wearing the appropriate safety gear (hard hats, safety vests, etc).*

*The advertisement is clearly intended to be humorous and light-hearted, whereby all the construction workers/tradesmen on site are sitting around having a 'smoko' break during their downtime, while they are waiting for other work to be finished on site by other tradesmen (a common situation on a building site).*

*Accordingly, the tradesmen are not depicted as gambling on their phones in a way which could be construed as being unhealthy or unsafe, or acting in any other way which could posing a health and safety risk on the work site or according to 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 all the construction workers/tradesman on site are sitting around having a 'smoko' break, waiting for other work to be finished on site (this is a common occurrence on a construction site).*

*The tradesmen are all gainfully employed and are simply depicted as choosing to entertain themselves by having a bet on their phone during this downtime/smoko break.*

*They are not depicted as gambling on their phones in a way which could be construed as an alternative way of earning an income or as a viable alternative to their jobs.*

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

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

*Advertisers Response:*

*The advertisement depicts a scenario whereby all the construction workers/tradesman on site are sitting around having a 'smoko' break, waiting for other work to be finished on site.*

*The tradesmen are depicted as choosing to have a bet on their phone during this downtime/smoko break and they are not depicted as gambling on their phones in a way which could be construed as taking priority over, or neglecting their work responsibilities.*

*The advertisement is intended to, and in fact does depict the tradesman in a humorous way, taking advantage of their downtime on site, to entertain themselves and have a bet on their phone.*

*The sole intent and unequivocal message of the advertisement is to suggest that consumers can take advantage of any down time, quiet time or wasted time they may otherwise have, to entertain themselves on their phone, which may in this instance, include having a bet.*

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

## **2. FITTING ROOM SCENE**

*Issues Raised to Date:*

*Section 2.1 of the AANA Code of Ethics*

*2.1 Discrimination or Vilification of Gender*

*The advertisement depicts a scenario whereby the male partner is patiently sitting in the shop fitting room wait area, while for his female partner tries on clothes.*

*This advertisement depicts a common scenario between a husband/wife or boyfriend/girlfriend who are out shopping together and the male partner finds himself in a familiar situation of waiting around in the fitting room for his female partner to try on clothes.*

*The advertisement is clearly intended to be a humorous and light-hearted take on a situation which many couples find themselves in on a regular basis.*

*The male is depicted as being caring and supporting his female partner (albeit in a light hearted satirical way) and is happy to sit there patiently waiting for his female partner to finish trying on the clothes.*

*He simply chooses to entertain himself on his phone while he is waiting, rather than complaining or telling his female partner to hurry up.*

*Therefore, it is submitted that the advertisement does not portray the female character in a way which discriminates against or vilifies the female character on account of gender.*

*Section 2.6 of the AANA Code of Ethics*

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

*Advertisers Response:*

*The advertisement depicts a scenario whereby the male partner is patiently sitting around in the shop fitting room area, while his female partner to try on clothes.*

*The advertisement is clearly intended to be humorous and light-hearted and not in any way suggesting that men be secretive in relation to their gambling or suggestive of using deception in order to gain more time to bet.*

*The male in the advertisement is depicted as choosing to take advantage of the wait time and entertain himself by have a bet on his phone, rather than complaining about waiting, being bored or telling his female partner to hurry up.*

*Accordingly, the male in the advertisement is not depicted as gambling in an unhealthy way or which could otherwise be construed as taking priority over other commitments or responsibilities.*

*Further, the conduct of the male in the advertisement in sitting on a lounge, using his phone to entertain himself, could not be construed as posing a health and safety risk in the fitting room area at environment or otherwise according 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 partner is waiting around in the fitting room for his female partner to try on clothes.*

*The male in the advertisement is depicted as choosing to take advantage of the down time while he is patiently waiting for his female partner and entertaining himself on his phone by having a bet.*

*The male partner is not depicted 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:*

*The advertisement depicts a scenario whereby the male partner is waiting around in the fitting room for his female partner to try on clothes.*

*The male in the advertisement is depicted as choosing to take advantage of the down time while he is patiently waiting for his female partner and entertaining himself on his phone by having a bet.*

*Accordingly, the male person 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 wasted time they may otherwise have, to entertain themselves on their phones, which may in this instance, include having a bet.*

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

### **3. ELDERLY LADY AT CHECKOUT**

*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.*

#### **4. TELEMARKETER CALL**

*Issues Raised to Date:*

##### **2.1 of the AANA Code of Ethics – Discrimination or Vilification of Gender**

*The advertisement depicts a scenario whereby the man is having dinner with his partner and her family at home.*

*This advertisement depicts a common scenario, where the man finds himself at the dinner table in an uncomfortable situation with his girlfriend's parents staring awkwardly at him.*

*This is a common scenario which many men would have found themselves in at some point in their lives.*

*The male is depicted in a humorous and light-hearted manner, whereby given that his time is already taken up by the annoying telemarketing call, he uses the opportunity to temporarily escape the awkward situation at the dinner table.*

*There is no language or conduct directed by the man towards his female partner (express or implied) which could be construed as sexual discrimination or vilification on account of her gender.*

##### **Section 2.6 of the AANA Code of Ethics**

##### **2.6 - Health and Safety Within prevailing Community Standards**

*Advertisers Response:*

*The advertisement is clearly intended to be humorous and light-hearted and not in any way suggesting that people lie or deceive family or friends in order to gain more time to gamble.*

*The male person in the advertisement is not depicted as gambling on his phones in a way which could be construed as taking priority over his family life or in any way which could pose a health and safety risk at home or otherwise 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 having dinner with his family cleverly turns a negative (being a typical annoying telemarketer call) into a positive.*

*Given that the man's time is already being taken up by the telemarketing call, he is depicted in a humorous and light-hearted manner to be cleverly using that opportunity (ie. during this time otherwise taken up by the telemarketing call) to have a bet on his phone during this distraction.*

*The male partner is not depicted 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:*

*The advertisement depicts a scenario whereby the male having dinner with his family cleverly turns a negative (being a typical annoying telemarketer call) into a positive.*

*Given that the man's time is already being taken up by the telemarketing call, he is depicted in a humorous and light-hearted manner to be cleverly using that opportunity (ie. during this time otherwise taken up by the telemarketing call) to have a bet on his phone during this distraction.*

*Accordingly, the male person in the advertisement is not depicted as gambling on his phones in a way which could be construed as taking priority over his family life or in any way which could pose a health and safety risk on the site.*

*It is implied by the conversation the male has with the telemarketer, that once the call is finished, the male would return to the dinner table to resume his meal with his partner and her parents.*

*The sole intent and unequivocal message of the advertisement is to suggest that consumers can take advantage of any down time, quiet time or wasted time they may otherwise have, to entertain themselves and have a bet.*

*The LIFT 2.1 Discrimination or Vilification of Gender The advertisement depicts a scenario whereby the man in the lift quickly presses all the buttons so the lift takes longer to get down.*

*This is actually a remake of a scene out of a well known movie, and is clearly intended to be humorous and light-hearted look at an everyday situation where office workers find themselves stuck in a lift which is going to what seem like every floor before theirs.*

*The lift contains a mix of male and female office workers (as you would expect in a normal office situation like this) and there is no suggestion that the mischievous act of the male lead is pressing every button on the lift is somehow intended to take advantage of or otherwise vilify the female standing next to him in the lift, as his actions effect everyone in the lift equally.*

*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 advertisements denigrate women, encourages deceitful behaviour and portrays 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 five advertisements in the series and that the same advertisements are currently being aired on television. At the conclusion of each advertisement the brand name “NEDS” appears on screen and the words “it’s time to bet.” The versions are: Construction site (1), Fitting Room scene (2), Lady at checkout (3), Telemarketer call(4) and The lift(5)

The Board first considered the Construction Site version (1).

The Board 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 advertisement “construction site” features a woman approaching the foreman regarding the progress of the home she is having built. The Foreman speaks to the workers on the building site and they each explain the reasons why they cannot progress any work. The examples include,

- not being able to put the roof on until the insulation is finished,
- can’t do anything until the wiring is done,
- waiting for the installation of the solar panels
- can’t install the solar panels until the roof is on.

The Board noted the complainants’ concerns that the woman is seen to be dismissed and is not respected in her query regarding the progress of the construction and that this is offensive to women.

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 that the woman appears unimpressed by the information she is receiving from the foreman and that as she hears the excuses she remains unhappy about the reasons. The Board noted that the woman walks away at the end of the advertisement seemingly in disgust about what she has been told.

The Board noted that the woman does not appear to believe the reasons she has been provided and her departure is in response to the realization that there would be no work done at that time. The Board considered that the way the workers and in particular the foreman treat her query is not a direct response to her being a woman but rather a list of related circular excuses because the men would rather be doing something else.

The Board considered that whilst the woman may be treated disrespectfully, the woman is not portrayed as being humiliated or intimidated and noted that she walks away of her own accord in a frustrated manner. The Board considered that the advertisement did not portray or depict material in a way which discriminates against or vilifies a person on account of



...gender... and did not breach section 2.1 of the Code.

The Board then 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 this 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 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 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 and following considerable discussion, 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 the current advertisement the Board noted the advertiser’s response that “the tradesmen are all gainfully employed and are simply depicted as choosing to entertain themselves by having a bet on their phone during this downtime/smoko break.”

The Board noted that it is impossible to know whether or not the workers are on a break and that the very first scene of 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 than doing their paid job.

The Board considered that the loop of reasons provided by the workers in order to not do any work were a collection of excuses that were given for the purpose of allowing the men to continue to bet rather than work.

The Board considered that the choice of the men to discontinue working had a direct impact on the progression of the building and that this had a clear impact on the woman who was visiting the site.

The Board considered that similar to the cases mentioned above, 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 considered that the advertisement does portray excessive participation in wagering activities where the wagering has taken priority in the lives of the workers, to the detriment of the woman home owner and determined that this depiction breaches Section 2.8 of the Wagering Code.

The Board then considered the version referred to as the fitting room scene (2).

The Board 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 advertisement is part of a series and that this particular advertisement "Shopping" features a woman trying on clothing and her partner sitting on a couch and passing her more clothes to try on. The woman accepts the clothing options and the man says "take your time" then 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 man is disrespectful to the woman as he has little interest in what she is doing and he is being deceitful as he distracts her so that he can bet.

The Board considered that the actions of the man are recognizable as a common social scenario of a man going shopping with his girlfriend, and considered that whilst the response to the woman may be viewed as disrespectful by some members of the community, the woman is not portrayed as being humiliated or intimidated and noted that she appears very happy with the situation. The Board considered that, while some members of the community would prefer to see women depicted in more meaningful ways, the depiction of a woman enjoying clothes shopping is not an unfair depiction or one that is likely to incite ridicule. The Board considered that the advertisement did not portray or depict material in a way which discriminates against or vilifies a person on account of ...gender... and did not breach section 2.1 of the Code.

The Board considered Section 2.8 of the Wagering Code (outlined above).

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.'

In the current case, the Board noted that the man is clearly not interested in the shopping activity and he is shown to take advantage of the time he has waiting for his partner to try on clothes. The Board considered that based on the advertisement, it is not possible to tell how often the man engages in wagering activities and the most likely interpretation is that he has found a way to occupy himself whilst waiting for his partner. The Board considered that the overall impression is that the man gives his partner additional clothes to try on so he can spend more time in the wagering activity. However in the context of the depiction of a man

being taken clothes shopping the Board considered that this was not excessive but rather was the man's way of making this outing more enjoyable.

The Board considered that the depiction 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 man are not a depiction that breaches Section 2.8 of the Wagering Code.

The Board then considered the Lady at Checkout version (3).

Considering all sections of the Code, the Board considered there was no breach of the Code of Ethics.

The Board noted the advertisement "lady at checkout" 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 Board again noted that the Practice Note lists three examples and 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 it had dismissed complaints about the same advertisement on Free-to air TV (0462/17). Similarly in this case, the Board noted that the man is shown to take advantage of the time he has waiting for the older woman to complete her shopping by using his device for the purpose of betting.

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

The Board then considered the version titled Telemarketer (4)

The Board noted the advertisement features a man and his partner sitting down at a table with her parents and their pet dog. The phone rings and the man quickly runs to answer the call. A woman starts talking on the other end but the man tells his family that it is "Daniel" from the office. The man leaves the room and sits on a couch and turns to his mobile while still on the

phone to the lady. The brand name “NEDS” appears on screen and the words “it’s time to bet.”

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 contrast to the Lottoland advertisement, in the current case, the Board considered that the advertisement is portraying a stereotypical situation of a man not wanting to be a part of the dinner engagement with his in-laws. The man is shown to take advantage of an opportunity to remove himself from the situation when the phone rings.

The Board noted that in the Lottoland case, the man ‘John’ is shown hiding and being secretive about the use of his device whereas in the current case, the man is not hiding from his family and friends but is seen openly leaving the room in order to speak on the phone and it is in this time that he makes the decision to place a bet or use the betting app.

The Board noted it is not possible to tell how often the man engages in wagering activities. In terms of the depiction of the man lying about who is on the phone in order to take time out from the dinner, in the Board’s view this is a depiction of a man in a situation he doesn’t want to be in, taking advantage of a situation to have some time away from the table. While the man does use that time to bet, in the Board’s view the overall depiction is not going beyond a reasonable use of a product to avoid a stereotypically unpleasant situation.

The Board considered that the depiction 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 and did not breach Section 2.8 of the Wagering Code

The Board lastly considered the version titled The Lift (5).

The Board noted the advertisement features a man entering a lift that is full of office workers. He quickly presses all the buttons and says “oops” so the lift will have to open its doors on all levels either on the way up or down. The man gives a cheeky look and a wink toward the man nearest to him and then swipes to see the NEDS branding on his phone and “it’s time to bet.”

The Board revisited 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 that the actions of the man were deliberate and that the only purpose for pressing all the buttons was clearly to increase the length of time in the lift so as to increase the amount of time he would have to spend on his device.

The Board noted that the usual behaviour in a lift is to push the button of the one floor that you require and not multiple floors. The Board noted that the workers in the lift are not impressed by the man's actions.

The Board noted that the man deliberately presses the buttons in the lift for the purpose of extending access to the betting app and that this has a direct implication on others in the lift. In the Board's view the overall depiction of the man and his actions is that in the situation depicted, catching a lift, the man is going beyond the ordinary amount of wagering as a result of intentionally pushing every button for the purpose of betting.

In the Board's view the man is going beyond a reasonable use of a product and beyond proper limits and that this meets the definition of excessive and is a portrayal of excessive wagering.

In the Board's view the lift version of the advertisement did breach section 2.8 of the Code.

Find that two of the advertisements, Construction site and the Lift did breach section 2.8 of the Code, the Board upheld the complaint.

## **THE ADVERTISER'S RESPONSE TO DETERMINATION**

In response to the upheld cases for Neds Lift and Construction TVC online, these have been unpublished.

