



## Case Report

<b>1</b>	<b>Case Number</b>	<b>0487/12</b>
<b>2</b>	<b>Advertiser</b>	<b>Tabcorp</b>
<b>3</b>	<b>Product</b>	<b>Gaming</b>
<b>4</b>	<b>Type of Advertisement / media</b>	<b>TV</b>
<b>5</b>	<b>Date of Determination</b>	<b>12/12/2012</b>
<b>6</b>	<b>DETERMINATION</b>	<b>Dismissed</b>

### ISSUES RAISED

- 2.1 - Discrimination or Vilification Sexual preference
- 2.4 - Sex/sexuality/nudity S/S/N - general

### DESCRIPTION OF THE ADVERTISEMENT

We open on a group of two men and a woman inside a pub/club TAB. One of the men stands up in slow motion, in a winning pose with a TAB ticket in his hands. His friends look at him in disbelief. We hear the sound from the TV of the winning moment that they are watching. Music starts playing: "This Magic Moment", by The Drifters.

We see the man make his way to the TAB counter, pausing to raise his eyebrows at a woman and to kiss a man.

### THE COMPLAINT

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

*In the latest version of the ad - the "winner" celebrates by kissing a fellow punter. Who is this punter? His boyfriend? A hot date? Or some bloke? This is unclear and serves only to reinforce the stereotype of "homophobia" associated with Australian males. I think this highly sexual method of celebration is inappropriate. Do you assume this fellow punter is just some bloke? That's homophobia - right there!*

*Everyone likes to win - but gambling does not improve your sexual prowess as is suggested in*

*this ad! Gambling robs people of money, assets and sometimes homes. It destroys marriages, and affects children. This ad connects gambling success with sexual success - and this is the wrong message.*

## **THE ADVERTISER'S RESPONSE**

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

### *TABCORP'S RESPONSE*

#### *Preliminary comments*

*There are a couple of preliminary points we would like to make in responding to this complaint: the first two are corrections and the third is definitional.*

*1. The complainant has referred to this advertisement as the "latest version of the ad". This, and the fact the complaint was received on 28 November 2012, suggests that this is a new advertisement which has only recently been broadcast. This is incorrect. This advertisement was first published on youtube.com on 27 August 2012 and first broadcast on television on 29 September 2012. It has since been viewed over 4,000 times on youtube.com and broadcast over 400 times (to many millions of people) on free-to-air and subscription television.*

*2. The complainant has also referred to the winner kissing a "fellow punter" in the advertisement. While the man that is kissed is another patron at the venue, there is no suggestion in the advertisement that he is a "fellow punter", so we shall refer to him as a fellow patron.*

*3. For the purposes of our response, we have assumed that the complainant is using the term "homophobia" in its broadest sense, to encompass a range of negative attitudes and feelings toward homosexuality or people who are identified or perceived as being lesbian, gay, bisexual or transgender.*

*There appear to be two issues raised by the complainant.*

*We understand the crux of the first paragraph to be a complaint relating to "homophobia", which we assume the complainant alleges is in breach of Section 2.1 of the AANA.*

*We understand the crux of the second paragraph to be a complaint that the advertisement draws a connection between gambling and sexual success, which we assume the complainant alleges is in breach of Section 2.4 of the AANA.*

#### *First issue raised by the complainant*

*Section 2.1 provides that "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".*

*The advertisement does not discriminate against or vilify any person or section of the community. The complainant fails to identify any part of the advertisement which does so.*

*The complainant also fails to identify which section of the community is alleged to have been discriminated against or vilified (it is not clear to us whether the complainant is alleging that Australian males as a whole are being discriminated against or whether homosexual males in the community are being discriminated against). We therefore do not understand why Section 2.1 of the AANA is relevant to this advertisement.*

*Notwithstanding this, our response to the first complaint is as follows.*

*On our reading, the first complaint is that the failure to properly identify the relationship that exists between the winner and the fellow patron "serves only to reinforce the stereotype of 'homophobia' associated with Australian males".*

*Our response is:*

- 1. We do not follow this line of reasoning.*
- 2. We disagree that there is a stereotype of “homophobia” associated with Australian males.*
- 3. We would say that even if this stereotype was found to exist, we do not understand how the failure to identify the relationship that exists between the winner and the fellow patron has any impact on whether or not that stereotype is reinforced.*
- 4. Although not directly referred to in the complaint, we note that the ASB has previously found an advertisement that involved two women kissing to be acceptable on the grounds that “a Prevailing Community Standard...includes tolerance”.*
- 5. There can be no suggestion that any of the people depicted in the advertisement exhibit any of the characteristics associated with behaviour which would, applying the broadest definition of “homophobia”, be regarded as “homophobic”.*

*Turning to the final point in greater detail, the fellow patron appears nonplussed by the attention that he receives from the winner. His reaction is not that of someone who is angry, feels threatened or has negative feelings towards the winner. The fellow patron does not react negatively, violently, or aggressively to being kissed by the winner. Neither his response to the winner, nor the responses, actions or depictions of anyone else featured in the advertisement discriminates against or vilifies anyone or any section of the community.*

*For these reasons, we do not think that the advertisement breaches Section 2.1 of the ANAA. Second issue raised by the complainant*

*On our reading, the second complaint is that the advertisement suggests that gambling “improves your sexual prowess”.*

*The advertisement does no such thing. There is no suggestion that by gambling the winner has improved his sexual prowess.*

*The man begins by showing the winning ticket to his companions. They are confused by his celebration. He then approaches a nearby table where a couple is seated. They too are confused by his celebration. The man then approaches a fellow patron who is sitting alone at a different table. He kisses him. The fellow patron appears indifferent to the attention he has received from the man. Finally, the man makes his way to the counter where he hands over his winning ticket.*

*At no point is there any suggestion that by winning the man has improved his sexual prowess. At no point is there a connection between gambling success and sexual success.*

*Our creative agency, Belgiovane Williams Mackay, when speaking to B&T (Australia's leading industry publication for advertising, marketing, media and PR) in August, described the advertising campaign as follows: “We’ve brought the campaign to life by highlighting the different ways of celebrating a win, whether it’s a swagger or a jig on the walk to collect...all the executions highlight some of the ways we celebrate a job well done.”*

*At various points throughout the advertisement, the people with whom the man interacts express their confusion at his behaviour, through a raised eyebrow, a smirk or similar. We consider that this is clear body language that these people do not understand the behaviour of the man and find his way of celebration to be confusing. These responses do not suggest that the man, by gambling, has improved his sexual prowess. The advertisement does not, on any reasonable interpretation, connect gambling success with sexual success.*

*For these reasons, we do not think that the advertisement breaches Section 2.4 of the ANAA. Tabcorp’s approval process*

*All Tabcorp advertisements are reviewed and authorised by Tabcorp’s internal Legal Department. In addition, FreeTV’s Commercials Advice team approved this advertisement prior to it being broadcast.*

*Placement of the advertisement*

*Tabcorp takes care to advertise its products at appropriate times and during relevant*

*programs. This ensures that the appropriate audience is exposed to the advertisement. The advertisement was first broadcast during the AFL grand final coverage (on 29 September 2012) to an audience of over 3 million people. The advertisement was also broadcast during the NRL grand final coverage (on 30 September 2012) to an audience of over 2.4 million people. Since then, the advertisement has been broadcast over 400 times on both free-to-air and subscription television. In addition, the advertisement has been viewed over 4,000 times on youtube.com.*

*Tabcorp is not aware of any other complaints regarding this advertisement.*

*Tabcorp's commitment to responsible gambling*

*Tabcorp takes its obligations to depict responsible gambling behaviour seriously. We have been rated as the overall global gambling industry leader in the annual assessment for the Dow Jones Sustainability Index in seven out of the past eight years.*

*Tabcorp also received a 100 per cent rating in the 'Promoting Responsible Gambling' category, a rating we have received for six successive years. Tabcorp's global leadership ranking in the Responsible Gambling category recognises our commitment to the responsible delivery of gambling products. Responsible gambling is an important part of our operating philosophy and company values.*

*We thank you for providing us with the opportunity to respond to the complainant.*

## **THE DETERMINATION**

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

The Board noted the complainant's concerns that the advertisement is homophobic and suggests that gambling success will lead to sexual success.

The Board viewed the advertisement and noted the advertiser's response.

The Board considered whether the advertisement was in breach of Section 2.1 of the Code. Section 2.1 of the Code states: "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...sexual preference..."

The Board noted that the advertisement features a man winning a bet and then celebrating as he makes his way through the bar to collect his winnings. The Board noted it had recently dismissed a similar advertisement by Tabcorp which featured three men winning (case reference 0409/12).

The Board noted the complainant's concerns that the depiction of the man celebrating his win by kissing one of the male patrons seated in the bar area is homophobic and considered that this was an interpretation unlikely to be shared by the broader community given that the reaction to the kiss between two men is not in any way negative.

The Board determined that the material depicted did not discriminate against or vilify any person or section of the community on account of sexual preference and did not breach Section 2.1 of the Code.

The Board considered whether the advertisement was in breach of Section 2.4 of the Code. Section 2.4 of the Code states: "Advertising or Marketing Communications shall treat sex,

sexuality and nudity with sensitivity to the relevant audience”.

The Board noted the complainant’s concerns that the advertisement suggests that gambling is presented in a manner which indicates sexual success. The Board considered that the advertisement does not suggest that the sexual success of the man who has won a bet has been elevated as a result of his win but rather that he is happy to have won on this occasion and is reacting with an over the top display of affection towards both males and females. The Board considered that the man is looked upon with humour by the women and it is not sexually suggestive.

Based on the above the Board determined that the advertisement did treat sex, sexuality and nudity with sensitivity to the relevant audience and did not breach Section 2.4 of the Code.

The Board considered whether the advertisement was in breach of 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 that gambling is a product which is allowed to be advertised and considered that the advertisement depicts a person who is happy because he has won some money. However the Board considered that the advertisement does not encourage excessive gambling or otherwise promote behaviour which would be considered to be against prevailing community standards on gambling.

Based on the above, the Board determined that the advertisement did not depict material contrary to prevailing community standards on health and safety and did not breach Section 2.6 of the Code.

Further finding that the advertisement did not breach the Code on any grounds, the Board dismissed the complaint.