



# Case Report

<b>1</b>	<b>Case Number</b>	<b>0489/17</b>
<b>2</b>	<b>Advertiser</b>	<b>Lottoland</b>
<b>3</b>	<b>Product</b>	<b>Gaming</b>
<b>4</b>	<b>Type of Advertisement / media</b>	<b>TV - Free to air</b>
<b>5</b>	<b>Date of Determination</b>	<b>08/11/2017</b>
<b>6</b>	<b>DETERMINATION</b>	<b>Dismissed</b>

## ISSUES RAISED

- 2.5 - Promise of winning State or imply a promise of winning
- 2.8 - Excess participation Condone or imply excess participation

## DESCRIPTION OF THE ADVERTISEMENT

Infomercial on the Channel 9 morning show relating to Lottoland and its service offering, which is the provision of betting on the outcome of lotteries.

## THE COMPLAINT

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

*I object to having an infomercial selling a gambling site, encourageing people to gamble and how they will win and how it changes lives. It's one thing to advertise in commercials but when someone is sitting there telling viewers that its something they should do it's gone to far. I'm all for advertising but this is ridiculous.*

## THE ADVERTISER'S RESPONSE

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

*The infomercial in question relates to Lottoland and its service offering, which is the provision of betting on the outcome of lotteries. The complaint clearly notes that the complainant knows that the infomercial is advertising gambling. In the reason for concern*

*quoted by the Case Managers, the complainant says that the “infomercial” is “selling a gambling site”. Therefore there can be no question that the complainant knows the infomercial to be advertising material and not editorial material.*

*Lottoland submits the following regarding the applicability of each part of section 2 of the Code, referring to each of the sub-sections by number:*

- *2.1 – the infomercial does 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. Nor does the complaint allege this;*
- *2.2 – the infomercial does not employ sexual appeal in a way or manner described in this sub-section, or in any way or manner whatsoever. Nor does the complaint allege that it does;*
- *2.3 – the infomercial does not present or portray violence in a way or manner described in this sub-section, or in any way or manner whatsoever. Nor does the complaint allege that it does;*
- *2.4 – the infomercial contains no sex, sexuality or nudity as mentioned in the sub-section. Nor does the complaint allege that it does;*
- *2.5 – the infomercial uses language which is appropriate in the circumstances and contains no strong or obscene language. The complaint does not allege that it does;*
- *2.6 – the infomercial does not depict material contrary to prevailing community standards (as that term is defined in the Code) on health and safety. Nor does the complaint allege that it does; and*
- *2.7 – the infomercial is clearly an advertising and marketing communication. The complaint makes it clear that the complainant knows this.*

*Lottoland also submits that the AANA codes relating to advertising and marketing to Children and Food and Beverage have no application due to the subject matter of the infomercial.*

*In relation to the Wagering Advertising and Marketing Communications Code (Wagering Code), Lottoland submits as follows, using the sub-section numbers set out in the Wagering Code:*

- *2.1 – the infomercial is not directed primarily to Minors. During the infomercial (at 1.09 to 1.32 on the timeline) a banner comes up that contains a clear message that minors are not able to bet on the service. The complaint does not allege that the infomercial is directed to minors;*
- *2.2 – the infomercial does not depict a person who is a Minor. The complaint does not allege it does;*
- *2.3 – the infomercial does not depict a person aged 18-24 years old engaged in wagering activities. The complaint does not allege it does;*
- *2.4 – the infomercial does not portray, condone or encourage wagering in combination with the consumption of alcohol. The complaint does not allege that it does;*
- *2.5 – the infomercial does not state or imply a promise of winning. There is no suggestion in the infomercial that winning will be a definite outcome of participating in Lottoland’s offering, or in wagering generally. The complaint does not allege that it does;*
- *2.6 – the infomercial does not portray, condone or encourage participation in wagering activities as a means of relieving a person’s financial or personal difficulties. There is no reference to salary or debts or anything playing on a consumer’s fears of*

*financial pressures. The infomercial does not present wagering as a viable alternative to employment. The quote from the winner refers to using the winnings to travel to see a family member overseas and maybe to buy a house. These are not expressions of any financial difficulty that winning would relieve. Rather, as the compere says, it allows the winner to “Dream Bigger”. The complaint does not allege that the infomercial portrays, condones or encourages participation in Lottoland’s service offering as a means of relieving a person’s financial or personal difficulties;*

- *2.7 – the infomercial does not state or imply a link between wagering and sexual success or enhanced attractiveness. The complaint does not allege that it does;*
- *2.8 – the infomercial does not portray, condone or encourage excessive participation in wagering activities. There is nothing in it that depicts participants wagering beyond their means, wagering taking priority in a participant’s life or prolonged and frequent wagering to improve a participant’s skill in wagering. The complaint does not allege that it does;*
- *2.9 – the infomercial does neither of portraying, condoning or encouraging peer pressure to wager nor disparaging abstention from wagering activities. There is nothing in it that encourages criticism or ridicule for not engaging in wagering activities or mocks non-participants. The complaint does not allege that it does.*

*In summary, none of the specific sub-sections of an applicable code appear to have been breached. Indeed, from Lottoland’s analysis, the complaint itself does not specifically complain about any particular issue covered by the applicable codes. Based on the infomercial itself, the complaint is wrong in saying that the infomercial:*

- *encourages people to gamble – it does not;*
- *tells people they will win – it does not;*
- *that gambling changes lives – it does not;*
- *tells people they should gamble – it does not.*

*In Lottoland’s submission, the complainant seems to be complaining about the format of the advertising and marketing, while they know full well that it is just that – an infomercial that is advertising and marketing of a perfectly legal betting service.*

*Lottoland notes that the script for the infomercial was reviewed and approved by Channel 9. During that review process, Lottoland provided a response to a series of substantiation questions posed by Channel 9 (including its legal team).*

## **THE DETERMINATION**

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

The Board noted the complainant’s concerns that the advertisement encourages gambling suggesting it can change your life.

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

The Board considered Section 2.5 of the Wagering Code. Section 2.5 state that: “Advertising or Marketing Communication for a Wagering Product or Service must not state or imply a

promise of winning.”

The Board noted the advertisement is an infomercial aired during the morning program - Today and features two women (the host - Janey) and the Lottoland representative (Lydia) talking about the product and how people can bet on both Australian and International lotteries. The website for Lottoland appears on screen and particular jackpots are promoted.

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 however, discussions around the promotion of gambling products in general is not a matter for the Board. The Board noted that its role is to consider the content of advertising and marketing communications and not the product or service being promoted.

The Board considered that the current advertisement is an advertisement for Lottoland, an operator licenced to provide wagering products or services to customers in Australia and therefore the provisions of the Wagering Code apply.

The Board noted the complainants’ concerns that the promotion encourages gambling by suggesting it will change lives.

The Board noted the practice note to the wagering code that states that “Advertising or marketing communication may depict winning on a wager provided there is no direct or implied suggestion that winning will be a definite outcome of participating in wagering activities.”

The Board noted the infomercial refers to the simple way to use the app and the size of potential wins from the US and other international lotteries. The Board noted that the discussion between the two women is very positive and noted that the overall tone and language throughout the promotion refers to what you ‘could win.’

The Board considered the nature of the Lottoland proposition, where customers can wager to win significant international lotto or lottery jackpots.

The Board considered that it is reasonable for an advertiser of a wagering product to refer to opportunities of winning, the size of the prize and to actual people that have won and noted that in this advertisement the advertiser does refer to these things without implying that winning would be a definite outcome.

The Board considered that the advertisement did not breach section 2.5 or the wagering 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 in this advertisement there 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 showing how to use a mobile device, in the context of an advertisement for a wagering service 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 complaints about excessive participation in wagering activities in case 0447/16, 0459/17 and 0492/17 where wagering appeared to take priority in a participant's life or participants went beyond ordinary or proper limits.

In contrast, in the current case, the Board considered that overall the advertisement is providing information about the Lottoland wagering product and how customers can use Lottoland to wager on international lottery or lotto jackpots and provides examples of potential outcomes. The Board considered that the advertisement does not suggest that viewers should bet outside of their means and does not show anyone using the product.

The Board considered that the depiction of two women talking factually about the wagering product and the international jackpots available is not a depiction that is condoning or encouraging excessive participation and in the Board's view the message taken from the promotion is not a portrayal of, or encouragement for, excessive participation in wagering activities.

The Board determined that the content of the infomercial is not a depiction that breaches Section 2.8 of the Wagering Code.

Finding that the advertisement did not breach the Wagering Code, the Board dismissed the complaint.