



## Case Report

1	Case Number	0492/17
2	Advertiser	NEDS
3	Product	Gaming
4	Type of Advertisement / media	TV - Free to air
5	Date of Determination	08/11/2017
6	DETERMINATION	Upheld - Modified or Discontinued

### ISSUES RAISED

- 2.3 - Depicting 18 – 24 year olds Depiction of engaging in wagering
- 2.8 - Excess participation Condone or imply excess participation

### DESCRIPTION OF THE ADVERTISEMENT

The advertisement depicts a scenario whereby the man in the lift quickly presses all the buttons so the lift takes longer to get up/down.

### THE COMPLAINT

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

*I feel these ads are giving the impression that placing a bet is more important than family, relationships or even general regard for the people around them. It makes no sense to me that these ads portray a sense of normality when there is such a problem with gambling, also I have not noticed the gamble responsibly warning. The more I see these ads the more annoyed I get with them. There seems to be more and more advertising for gambling on TV by normalising it and telling people to gamble responsibly is not going help anything.*

*He is imposing his gambling addiction on the other people in the lift by making them have to stop at every floor. Neither of these men appear to be of good character. I have seen these adds early in the evening and in the morning.*

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

## **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 2.1 of the AANA Code of Ethics*

*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 up/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 women in a way which could be construed as discriminating, vilifying, exploitative or degrading.*

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

*Depicting 18-24 year olds engaging in wagering*

*The male lead depicted in the advertisement is 35 year old Tahki Saul*

*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 man in the lift quickly presses all the buttons so the lift takes longer to get up/down.*

*It is clearly intended to be a humorous and light-hearted look at an everyday situation where office workers find themselves stuck in a lift.*

*The male lead character, after having pressed the button for every level as a prank, he uses this opportunity (ie. during this time otherwise taken up stuck in the lift) to entertain himself and have a bet on his phone.*

*It is submitted that the male lead in the advertisement is not depicted as gambling on his phone in a way which could be construed as taking priority over other aspects of his life or in any other way which portrays, condones or encourages 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 uses a young man who looks under the age of 24 gambling 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 this advertisement is called “the Lift” and 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 considered whether the advertisement complied with Section 2.3 of the Wagering Code which states that Advertising or Marketing Communication for a Wagering Product or Service must not depict a person aged 18-24 years old engaged in wagering activities.

The Board noted the advertiser’s response that the actor is 35 years old. The Board considered that in the scenario depicted with the man in business attire entering a lift with work colleagues, the overall impression is that the man is over the age of 24.

Based on the advertiser’s conformation of his age the Board considered the advertisement did not breach section 2.3 of 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 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 the current advertisement, 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.

The Board noted that it had upheld the same advertisement broadcast on the internet (0475/17) and in the Board's view the lift version of the advertisement as it appeared on Free to air television did breach section 2.8 of the Wagering Code.

Find that the advertisement did breach section 2.8 of the Wagering Code, the Board upheld the complaints.

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

We acknowledge receipt of the above decision to uphold the complaint.

Without making any admission, we confirm that the allegedly infringing advertisement was discontinued from broadcast on free to air television in accordance with the below dates (as required within 5 day window for remedial action):

Ten – 7th Nov at 1am

Seven – 4th Nov at 11:08pm

Nine – 7th Nov at 11:15am

Win – 7th Nov at 11:52pm

SCA – 12th of Nov at 5:27pm