



**Ad Standards** Community Panel  
PO Box 5110, Braddon ACT 2612  
P (02) 6173 1500 | F (02) 6262 9833

**AdStandards.com.au**

Ad Standards Limited  
ACN 084 452 666

## Case Report

<b>1. Case Number :</b>	<b>0294-21</b>
<b>2. Advertiser :</b>	<b>Entain Group Pty Ltd</b>
<b>3. Product :</b>	<b>Gambling</b>
<b>4. Type of Advertisement/Media :</b>	<b>TV - Pay</b>
<b>5. Date of Determination</b>	<b>27-Oct-2021</b>
<b>6. DETERMINATION :</b>	<b>Upheld - Modified or Discontinued</b>
<b>7. IR RECOMMENDATION:</b>	<b>Panel to Reconsider</b>
<b>8. Date of reviewed determination:</b>	<b>8-Dec-2021</b>
<b>9. DETERMINATION ON REVIEW:</b>	<b>Dismissed</b>

### ISSUES RAISED

AANA Code of Ethics\2.3 Violence

### DESCRIPTION OF ADVERTISEMENT

This Pay TV advertisement features three men in a kitchen. One of the men is juggling apples and says he has three going at once. Another man shows his phone and states he has four. A voice-over gives details on a same race multi promotion. Another man is then shown near a window, bouncing a ball off the window. He says, "I'm not going to lie. You ladbroke it. You ladbroke it good". He throws one of the balls and hit hits the juggling man in the face.

### THE COMPLAINT

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

*this is degrading to the employee and to people generally. there is no humor associated with the act only one person mike iceberg is made to look important. the ad series is distasteful and degrading they should all be stopped.*

### THE ADVERTISER'S ORIGINAL RESPONSE

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



*Thank you for your letters dated 14 October 2021 and for bringing these complaints to our attention. We are always open to hearing the views of community members either directly or through avenues such as Ad Standards (“AS”).*

*We understand that the advertisement in question is a Ladbrokes television commercial promoting our “Ladbrokes” brand and specifically our Same Race Multi product (“Ad”).*

*In your letters of 14 October 2021, the Ad is described by the community members as: “Mark Wahlberg advertises Ladbrokes gambling. Conversation between actors in a boardroom about betting with that service. At the end, actor pivots from window and deliberately and forcefully throws a ball at the other actor to belittle them. Mike Iceberg is seen playing with a ball which he then throws at an employee and hits him in the face.”*

*The specific reasons for concern outlined by the community members in your letters of 14 October 2021 of the Ad is:*

- Mark Wahlberg in this particular advert throws a ball deliberately into the face of one of the other players in the advert. It is an unnecessary violent act at a time when young children could still be watching TV. Advertising gambling apps should be banned like cigarettes and alcohol but this particular advert just goes too far!!*
- The normalising of violence in this way undermines community efforts to reduce domestic violence and that is prevalent alongside pub culture. It is outrageous that it trivialises the act and suggests the behaviour it is socially acceptable! The wrong message to send young people.*
- This is degrading to the employee and to people generally. There is no humor associated with the act only one person Mike Iceberg is made to look important. The ad series is distasteful and degrading they should all be stopped.*

*The specific issues raised are in relation to clause 2.3 of the AANA Code of Ethics – Violence, and clause 2.6 of the AANA Code of Ethics – Health and Safety – Bullying (non violent).*

*Our response to this complaint is set out below.*

#### *A description of the advertisement*

*The Ad is a 15 second advertisement that contains fictional characters and scenes. The Ad is set in a fantastical world. It follows the character “Mike Iceberg” (introduced in earlier commercials) who has been hired by Ladbrokes as the new “Chief Entertainment Officer”. He is able to do things that are extraordinary / out of the ordinary to make racing even more entertaining. In the earlier commercials, he coins the phrase “Ladbroke It” which is used to illustrate everyday things becoming more exciting and entertaining.*



*The Ad depicts “Mike Iceberg” in a room with three other friends/acquaintances. The three other people are discussing Ladbrokes’ Same Race Multi product and how it works, including placing a Same Race Multi bet. Mike Iceberg then turns and complements them for “Ladbroking It”. The phrase is a reference to how they’ve made the situation more exciting/entertaining. Mike Iceberg then throws a small soft rubber ball in the direction of one of the people, hitting him in the head. Mike Iceberg then states “I’m not going to lie. You Ladbroked it. You Ladbroked it good”. He then follows this up by giving a thumbs up sign.*

*The Ad concludes with the “Ladbrokes” logo on screen.*

*In accordance with regulations and as part of our commitment towards responsible gambling, “Is gambling a problem for you? Call Gambling Help on 1800 858 858 or visit [gamblinghelponline.org.au](http://gamblinghelponline.org.au)” appears on screen during the Ad. The national version of the Ad broadcast on pay TV also includes the specific South Australian responsible gambling message end frame at the conclusion of the Ad.*

*Our comments in relation to the complaint*

*At the outset and with respect to the views of the community member, we wish to correct some incorrect assertions made in the complaint:*

*Incorrect assertion*

*“throws a ball deliberately into the face of one of the other players in the advert”*

*Response*

*Although he throws the ball in the direction of the person’s head, there is no intent to hurt or harm him. Further, at no stage was any injury caused and there is completely no risk of injury given that it is a small soft rubber ball.*

*Incorrect assertion*

*“It is an unnecessary violent act”*

*Response*

*The throwing of the small soft rubber ball is not itself a violent act. In the context of the Ad, the throwing of the small soft rubber ball is not a violent act*

*Incorrect assertion*

*“The normalising of violence in this way undermines community efforts to reduce domestic violence and that is prevalent alongside pub culture. It is outrageous that it trivialises the act and suggests the behaviour it is socially acceptable!”*

*Response*

*The throwing of the small soft rubber ball is not itself an act of violence. In the context of the Ad, it is also not an act of violence or an act of “domestic violence”.*



*The Ad is set with fictional characters, with one person making a decision about Ladbrokes Same Race Multi product. The response is a positive response from the Mike Iceberg character as seen by what he says – “You Ladbroked it good” congratulating the person, and by giving a thumbs up.*

*Further, playfully throwing a small soft rubber ball at and between friends, including where the ball hits someone is a common activity amongst friends.*

*Incorrect assertion*

*“this is degrading to the employee and to people generally”*

*Response*

*At no stage does the Ad depict any degrading of anyone. The Ad is set with fictional characters, with one person making a decision about Ladbrokes Same Race Multi product. The response is a positive response from the Mike Iceberg character as seen by what he says – “You Ladbroked it good” congratulating the person, and by giving a thumbs up.*

*Incorrect assertion*

*“the ad series is distasteful and degrading they should all be stopped”*

*Response*

*At no stage does the Ad depict any degrading of anyone. Further, the Ad is in no way distasteful. The Ad is set with fictional characters, with one person making a decision about Ladbrokes Same Race Multi product. The response is a positive response from the Mike Iceberg character as seen by what he says – “You Ladbroked it good” congratulating the person, and by giving a thumbs up.*

*Section 2 of the Wagering Code*

*As we are an online and telephone wagering business licensed and regulated in Australia, the Wagering Code is applicable to our Ad. Although, for the reasons mentioned above and below, we do not believe our Ad contravenes the Wagering Code.*

*2.1 – Directed to Minors*

*We believe that our Ad, having regard to the theme, visuals and language used, is not directed to minors (persons under 18 years of age).*

*2.2 – Depiction of Minors*

*We believe that our Ad does not depict a person under the age of 18 years of age in an incidental role or at all.*

*2.3 – Depiction of 18-24 year olds wagering*

*We believe that our Ad does not depict a person aged 18-24 years old engaged in wagering activities.*

*2.4 – Wagering in combination with the consumption of alcohol*



*We believe that our Ad does not portray, condone or encourage wagering in combination with the consumption of alcohol.*

*2.5 – Stated or implied promise of winning*

*We believe that our Ad does not state or imply a promise of winning.*

*2.6 – Means of relieving a person’s financial or personal difficulties*

*We believe that our Ad does not portray, condone or encourage participation in wagering activities as a means of relieving a person’s financial or personal difficulties.*

*2.7 – Sexual success and enhanced attractiveness*

*We believe that our Ad does not state or imply a link between wagering and sexual success or enhanced attractiveness.*

*2.8 – Excessive participation in wagering activities*

*We believe that our Ad does not portray, condone or encourage excessive participation in wagering activities.*

*2.9 – Peer pressure to wager or abstention from wagering*

*We believe that our Ad neither portrays, condones or encourages peer pressure to wager nor disparages abstention from wagering activities.*

*Section 2 of the AANA Code of Ethics*

*For the reasons mentioned above and below, we do not believe our Ad contravenes the AANA Code of Ethics.*

*2.1 – Discrimination*

*We believe that our Ad does not discriminate against or vilify a person or section of the community on account of race, ethnicity, nationality, gender, age, sexual preference, religion, disability, mental illness or political belief.*

*2.2 – Sexual appeal*

*We believe that our Ad does not employ sexual appeal where images of minors, or people who appear to be minors, are used; or in a manner which is exploitative or degrading of any individual or group of people.*

*2.3 – Violence*

*We believe that our Ad does not present or portray violence.*

*The throwing of a small soft rubber ball at a friend/acquaintance is not violent and does not portray violence. The act of playfully throwing a small soft rubber ball at and between friends is a common activity played with friends. It is particularly common amongst “sporty” type friends. Just because the ball hits the person on the head in no way indicates that that act is violent, and in no way portrays violence.*

*The context of the Ad confirms this by the surrounding circumstances. The character, Mike Iceberg commends/congratulations the person saying “You Ladbroke it!” and follows this up with a complimentary statement, “You Ladbroke it good!”. He also*



*gives a thumbs up sign. This all clearly shows the surrounding positive (and not violent) nature of the Mike Iceberg character's behaviour and actions.*

#### *2.4 – Sex, sexuality and nudity*

*We believe that our Ad does not treat sex, sexuality or nudity with insensitivity to the relevant audience.*

#### *2.5 – Language*

*We believe that our Ad uses language which is appropriate in the circumstances, and is not strong or obscene.*

#### *2.6 - Health and Safety*

*We believe that the Ad does not depict material contrary to prevailing community standards on health and safety.*

*The throwing of a small soft rubber ball at a friend/acquaintance is not contrary to prevailing community standards on health and safety. The act of playfully throwing a small soft rubber ball at and between friends is a common activity played with friends. It is particularly common amongst "sporty" type friends. Just because the ball hits the person on the head is not contrary to prevailing community standards on health and safety.*

*The context of the Ad is that the character, Mike Iceberg commends/congratulations the person saying "You Ladbroke it!" and follows this up with a complimentary statement, "You Ladbroke it good!". He also gives a thumbs up sign. This all clearly shows the surrounding positive (and not violent) nature of the Mike Iceberg character's behaviour and actions.*

*Further, at no stage was the person that was hit with the ball injured in any way, or even likely to get injured. There was no risk of injury given that the ball used was a small soft rubber ball.*

#### *AANA Code for Advertising and Marketing Communications to Children*

*We do not consider that the AANA Code for Advertising and Marketing Communications to Children applies as the Ad is not, having regard to the theme, visuals and language used, directed primarily to children or for product which is targeted toward or having principal appeal to children.*

#### *AANA Food and Beverages Marketing and Communications Code*

*We do not consider that the AANA Food and Beverages Marketing and Communications Code applies as the Ad does not advertise food or beverage products.*

*We sincerely hope that the clarification provided here resolves the concerns of both Ad Standards and the community member.*

## **THE ORIGINAL DETERMINATION**



The Ad Standards Community Panel (the Panel) considered whether this advertisement breaches Section 2 of the AANA Code of Ethics (the Code).

The Panel noted the complainant's concern that the advertisement depicts distasteful and degrading behaviour.

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

### **Section 2.3: Advertising shall not present or portray violence unless it is justifiable in the context of the product or service advertised**

The Panel noted that the Practice Note to the Code states:

*"Although the depiction of violence in an advertisement may be relevant to the story being told in the advertisement, any violence must also be justifiable in the context of the product being advertised, or else will be in breach of this section of the Code."*

#### **Does the advertisement contain violence?**

The Panel noted that the advertisement appeared to depict one character deliberately throwing a soft ball at the head of another character, in a work-place environment.

The Panel noted that it had considered a similar issue in case 0325-20, in which:

*"The Panel noted that the ball is thrown at the man eating a sandwich and hits him in the head, causing him to fall backwards. The Panel noted that the man throwing the football, Wally Lewis, is a former rugby league player and his use of a ball is relevant to his persona. The Panel considered that the man eating the sandwich may have been able to catch the ball if he had been paying attention, and that there was not necessarily an intent to cause him harm. However, the Panel considered the man is seen to be hit by the ball and, whether this is intentional or not, this would constitute violence".*

A minority of the Panel considered that unlike the previous case, in the current advertisement the ball that was thrown was soft and not likely to cause harm. A minority of the Panel considered that the man was not shown to be physically harmed, and as such this would not constitute violence.

Consistent with the previous determination, the majority of the Panel considered that in the current advertisement the depiction of one person hitting another person in the head with a ball did constitute violence.

#### **Is the violence justifiable in the context of the product or service advertised?**



The Panel noted that it had considered a similar issue in case 0325-20, in which:

*“The Panel noted that Wally Lewis is dressed in a king costume and that the man eating did not react to the presence of others in his home. The Panel considered that the reaction of the man falling off the chair was exaggerated and not a realistic reaction to the low amount of force the ball was thrown with. The Panel noted that the man was not shown to be injured or in pain after being hit with the ball. The Panel considered that the violence depicted was slapstick and unrealistic. In the Panel’s view the low level of violence portrayed in the advertisement was justifiable in the context of the product advertised, and did not breach Section 2.3 of the Code.”*

A minority of the Panel considered that consistent with the determination in case 0325-20, the violence shown in the current advertisement was slapstick and exaggerated and the man who was hit with the ball was not shown to be injured or in pain.

The majority of the Panel considered that unlike case 0325-20, the current advertisement was set in an every-day environment. The Panel considered that although the ‘Mike Iceberg’ character was seen to be acting erratically, the setting was realistic and not fantastical.

The Panel noted that it had also considered a similar issue in case 0004-20, in which:

*“The Panel noted the advertiser features former cricketer Andrew Symonds who is known for shoulder charging a stalker during a cricket game in 2008, and that this advertisement is referencing this incident in a humorous manner. The Panel considered that the interaction between Symonds and the production assistant appeared sudden and unexpected. The Panel considered that the production assistant is not seen to get back up and there is a suggestion that he is injured and may need chiropractic help. The Panel considered that this did constitute a depiction of violence.*

*A minority of the Panel considered that the violence in the advertisement was a lighthearted and slapstick reference to a well-known event and that this low-level of violence was justifiable in the context of humorous advertising of a potential need for health insurance services.*

*The majority of the Panel considered that the violence in the advertisement was not mild, and that the casual violence shown was inappropriate in the circumstances. The majority of the Panel considered that the humour in the advertisement was dependent on the viewer’s recognition and knowledge of the previous incident, and that many viewers would not be aware of this. The majority of the Panel considered that Symonds shows no remorse for the situation, and that the production assistant is not shown to get back up. The majority of the Panel considered that the depiction does not show a resolution to the situation and that the viewer is therefore left with an impression of harm. The majority of the Panel considered that the depiction of purposefully*





*and unapologetically injuring someone was not justifiable in the context of advertising flexible health insurance cover”*

Consistent with the determination in case 0004-20, the Panel considered that the Mike Iceberg character was not seen to show remorse, and purposefully throwing something at someone is not justifiable in the context of advertising a wagering product.

The Panel noted that although the ball appeared to be soft and not to cause harm to the man who was hit by the ball, he appeared unhappy to have had a ball hit him in the face. The Panel considered that the action was in the nature of bullying. The Panel considered that throwing something at someone’s head, even a soft ball, was violent and was not an appropriate action.

### **Section 2.3 Conclusion**

The Panel determined that the advertisement did present or portray violence which was not justifiable in the context of the product or service advertised and did breach Section 2.3 of the Code.

### **Conclusion**

Finding that the advertisement did breach Section 2.3 of the Code, the Panel upheld the complaint.

### **THE ADVERTISER’S RESPONSE TO ORIGINAL DETERMINATION**

Thank you for your initial letter dated 14 October 2021 regarding our Ladbrokes advertisement and for the opportunity to provide a statement in response to the Community Panel's determination.

As set out in our letter dated 21 October 2021, Entain strongly denies that the advertisement contravenes any section of the AANA Code of Ethics (Code). Nevertheless, Entain has (without any admission) discontinued the advertisement.

We look forward to receiving further correspondence from your office providing Entain with the option to request an independent review of the Community Panel's determination. Entain takes its obligations under the Code very seriously, and is concerned by the Community Panel's determination. Accordingly, Entain intends to request that an independent review of the Community Panel's determination be conducted.

### **INDEPENDENT REVIEW**

#### **ADVERTISER’S REQUEST FOR INDEPENDENT REVIEW**



We refer to previous correspondence regarding a Ladbrokes television commercial promoting our “Ladbrokes” brand and specifically our Same Race Multi product (“Ad”).

As set out in our letter dated 21 October 2021, we are always open to hearing the views of community members either directly or through avenues such as Ad Standards (“AS”). We take our obligations under the AANA Code of Ethics and the AANA Wagering Advertising & Marketing Communications Code very seriously. Notwithstanding our commitment to compliance with these codes, we are deeply concerned by the Panel’s determination dated 27 October 2021 and communicated to us on 4 November 2021 (**Determination**).

Entain respectfully requests that the Independent Reviewer conduct a review of the Determination and to this end considers:

- there is an overwhelming (and most certainly a prima facie) case for review, such that Entain’s request should be accepted by the Independent Reviewer; and
- after conducting appropriate investigations, that the Independent Reviewer should recommend that the Panel review the Determination and dismiss the original complaint regarding the Ad.

### **Previous response and the relevant prohibition**

In our response to the complaint (letter dated 21 October 2021), we strenuously denied that the Ad contravened any section of the AANA Code of Ethics. We provided a number of submissions around that. We have further elaborated on many of those points in these submissions as we did not consider it was necessary at the time given in Entain’s respectful submission, the Ad clearly did not contain any violence.

Section 2.3 of the AANA Code of Ethics prohibits advertising that presents or portrays violence unless it is justifiable in the context of the product or service advertised.

In the Determination, the Panel concluded that the Ad did present or portray violence which was not justifiable in the context of the product or service advertised and did breach section 2.3 of the Code of Ethics. With respect, Entain submits that this conclusion was plainly wrong.

We have set out below our further submissions as to why the Panel’s conclusion was plainly wrong in the approximate order in which they have been dealt with by the Panel in the Determination. This includes restating the description of the Ad, followed by a number of factors that the Panel has either assumed and interpreted incorrectly, overlooked and has decided inconsistently with prior cases.

### **Description of the Ad**



The Ad is set in a fantastical world. It contains fictional characters and scenes. The Ad features the character “Mike Iceberg” (introduced in earlier Ladbrokes commercials) who is Ladbrokes “Chief Entertainment Officer” (a fictional/fantastical role). He is able to do things that are extraordinary / out of the ordinary to make racing and sport even more entertaining. In earlier Ladbrokes commercials, he coins the phrase “Ladbroke It” which is used to illustrate everyday things becoming more exciting and entertaining.

The Ad depicts “Mike Iceberg” in a room with three other friends/acquaintances. The three other people are discussing Ladbrokes’ Same Race Multi product and how it works, including placing a Same Race Multi bet. Mike Iceberg then turns and congratulates them for “Ladbroking It”. The phrase is a reference to how they’ve made the situation more exciting/entertaining. Mike Iceberg then throws a small soft rubber ball in the direction of one of the people, hitting him in the head. Mike Iceberg then states in a congratulatory way “I’m not going to lie. You Ladbroke it. You Ladbroke it good”. He then follows this up by giving a thumbs up sign.

#### **Not a workplace**

The Panel states that the throwing of the ball took place in a “work-place environment”. This is incorrect. Contrary to the Panel’s assumption, the Ad does not take place in a “work-place environment”. The Ad clearly shows a group of friends/acquaintances discussing and placing a bet using the Ladbrokes App in an apartment.

#### **The Ad does not contain violence**

Simply throwing a ball that hits a friend/acquaintance in the head is not in itself a violent act. Throwing a ball between friends is a common activity, especially between sport minded friends.

Further, the ball used was a small, soft rubber ball. It does not flow that throwing any object at a person constitutes a violent act. The context of the object thrown must be taken into consideration. For example, throwing a feather at someone would clearly not indicate a violent act, whereas throwing a knife at someone potentially would be a violent act. Here, the ball used was a small, soft rubber ball. The ball was so soft and rubbery that the man that was hit did not move at all and the ball bounced off him. We note that a minority of the Panel considered that as the ball was soft and not likely to do harm, combined with the fact that the man was not shown to be physically harmed, it does not constitute violence.

Further, the actions of the Mike Iceberg character after throwing the ball provide further context that the act was not violent. He clearly congratulates the man for “Ladbroking It”, stating “you Ladbroke it good!”. He then gives the man a positive thumbs up gesture.



Guidance can further be drawn from previous Panel decisions. There are a number of previous decisions where a person is hit with an object and the Panel has determined that it does not constitute violence. Specifically the below cases are on point and we have emphasized similar considerations that should be taken into consideration in our case:

- Case 0504/14 where in an advertisement for carsguide.com.au, after a man has explained his product, the viewer sees either animated soccer balls bouncing off parts of his body or animated bees attacking him and the man appears to react even though they are animations. The Panel stated, *“The Board noted that once the man has explained his product we see him being attacked either by animated bees or animated soccer balls and considered that whilst this depiction was not relevant to the advertised product **in the Board’s view it is slapstick and not suggestive of actual violence or harm.** The Board noted the man’s reactions which indicate he feels pain but considered his portrayal is intended to be over the top and comical and that **it is clear that he has not actually been harmed by the on-screen animation.** The Board considered that the advertisement did not present or portray violence and determined that the advertisement did not breach Section 2.3 of the Code.”* It is important to note that the Panel specifically points out that that the man was not actually harmed.
- Case 0040/12 where in an advertisement for Super Retail Group in a camping scene a Mum is seen to hit the Dad with what looks to be a hairbrush. The Panel stated, *“The Board considered whether the advertisement was in breach of Section 2.3 of the Code. Section 2.3 of the Code states: “Advertising or Marketing Communications shall not present or portray violence unless it is justifiable in the context of the product or service advertised”. The Board noted the advertisement is set in a tent and features a man showing his wife the blow up bed he has bought and then the wife hitting him on his back with her hairbrush when he admits he didn’t get a foot pump to blow the bed up. The Board noted the complainants’ concerns that the depiction of the woman using her hairbrush to hit her husband on the back is a depiction which amounts to domestic violence and is therefore not appropriate. The Board considered that most members of the community would consider this depiction to be a realistic situation whereby one spouse forgets something and the other gets annoyed and that when the woman hits her husband it is lighthearted, **the man is obviously not hurt by the action,** and it would be likely to be considered a humorous depiction of interaction between a happy couple while camping. The Board considered that if the genders were reversed and it was the man tapping the woman, the Board’s decision would remain the same: that this advertisement does not depict or condone domestic violence but rather it **depicts a realistic situation in a lighthearted manner and that the tap is more playful frustration than aggressive violence.** The Board considered that the advertisement does not present or portray violence and determined that the advertisement did not breach Section 2.3 of the Code.”*



- Case 0017/11 where in an advertisement for 3D Inspiration Paint Store, a woman hits a man over the head with a frying pan and he falls down. That Panel stated, *“The Board considered whether the advertisement was in breach of section 2.2 of the Code. Section 2.2 of the Code states that “Advertising or Marketing Communications shall not present or portray violence unless it is justifiable in the context of the product or service advertised.” The Board noted the advertisement features a woman who hits a man over the back of his head with a frying pan and he falls down. The woman then pushes the ladder over, seemingly onto the man, and mockingly calls out for help. The Board noted the advertiser’s response that **the ad is intended as slapstick humour** and the majority of the Board agreed that it is similar in nature to previous advertisements where humour is used in an attempt to capture the viewers’ attention...The majority of the Board considered that most members of the community would find the advertisement humorous and **would recognise that it was not encouraging or condoning violence**, but rather emphasising the unlikely but familiar situation between couples over decisions such as the colour of paint and home renovating in general. On this basis the Board determined that the advertisement did not depict or condone violence and was not in breach of section 2.2 of the Code.”*
- Case 368/08 where in an advertisement for Thifty Link Hardware, a man is seen with a child, and throws him a ball which knocks the child's glasses off, at which the man says "Sorry". The man is then seen pushing the child on a swing, so hard that the swing returns empty. The Panel stated, *“The Board considered the application of Sections 2.2 and 2.6, relating to violence and health and safety. The Board carefully viewed the advertisement and considered that there was an implication of nastiness, but **the presentation, including sounds and the well-known character used, gave it a slapstick character which did not constitute violence** or contravene prevailing community standard of violence, health or safety. The Board therefore found no breach of either Sections 2.2 or 2.6.”*
- Case 210/02 where in an advertisement for Australian Paper (Reflex) a woman is walking through an office and the woman is hit by what appears to be a football. The Panel stated, *“The Board noted the advertiser’s response that the commercial was **designed to highlight the unpredictable nature of the workplace and agreed that the scene was obviously humorous in intent**. The Board determined that the advertisement did not breach the Code on the grounds of discrimination, (age) vilification, or violence.”*

In case 080-21, Entain was the subject of complaints regarding an earlier advertisement that also featured the Mike Iceberg character. In that advertisement, the Mike Iceberg character was shown to knock a drink of water out of an employee’s hand, as well as a bar scene where a man falls through a table and there is a gunshot sound. In that case, the Panel concluded, *“The Panel considered that the scene is*



*consistent with old Western movies, and is consistent with the theme of the advertisement showing unrealistic scenarios. The Panel noted that the scene is brief, and considered that most members of the community would not find the advertisement to present violence.”* It is important to note that the Panel considered the activity of the western bar scene in the context of old western movies, not in the context of the product or service advertised. We submit that the same approach should be taken here. That is, the surrounding context of the Ad be taken into consideration. It is also important to note that the Panel took no issue with the Mike Iceberg character knocking a drink out of an employee’s hand.

Further, as a gambling operator, Entain (and the Ladbrokes brand) is only able to have customers who are 18 years of age or older. The Ad is directed at people who can legally use the product. The context of the Ad and its intended audience must be taken into consideration when determining whether the Mike Iceberg character’s conduct was violent. As only people aged 18 years of age or older can use our services, we submit that taking all of the above considerations into effect, this target market would not consider the Ad to contain violence.

#### **The Ad was slapstick**

Entain submits that the Panel has erred in determining that the Ad differed from case 0325-20. Similar to the advertisement in that case, the conduct here of the Mike Iceberg character and the Ad was slapstick, especially given the nature (and history/previous examples) of his character. Further, even if it is determined that the conduct of the Mike Iceberg character was “violent”, the violence was of such a low level, having respect of:

- the context – the Mike Iceberg character is congratulatory and compliments the man;
- the ball used was a small soft rubber ball; and
- the man suffered absolutely no injury whatsoever.

Case 0325-20 confirms that a low level of violence is permitted in advertisements. Further, the Panel’s Determination in respect of the Ad is inconsistent with previous determinations. In case 0325-20, the Panel determined that a low level of violence was justifiable in the context of the *product* advertised. The product advertised in that case was a protein shake (drink). It seems inconsistent that a low level of violence would be justifiable when advertising a protein shake (drink) but wouldn’t be justifiable when advertising a sports wagering brand using sporting references and activities that friends/acquaintances take part in (throwing a ball). We therefore submit that the Ad should be determined consistent with the finding in case 0325-20. That is, that the Ad did not breach section 2.3 (or any other section) of the Code of Ethics.

#### **Not an every-day environment**



The Panel states that the Ad was set in an “every-day environment”. This is incorrect. Contrary to the Panel’s assumption, the Ad is not set in an “every-day environment”. The character Mike Iceberg is a fictional/fantastical character (as clearly shown in other earlier Ladbrokes commercials), and the whole premise of him even being there is fantastical. We also note that the Panel’s assumption itself is in contradiction to the Panel’s own earlier statement, that the Ad took place in a “work-place environment”.

#### **No remorse shown**

The Mike Iceberg character did not show any remorse because firstly his actions were not needing any remorse. He congratulated the man and gave him a thumbs up. Secondly, no remorse was needed to be shown as there was nothing to be remorseful about. There was no violent act and no intention of a violent act. Further, there was no injury. There was no harm or pain caused to the man. Further still, there was no intent to injure, harm or cause pain to the man. He was simply playfully throwing the ball and congratulating the man on a choice well made.

The Ad clearly shows the aftermath of the man being hit by the ball. That is, that there was no injury, harm or pain caused. The low impact of the small, soft rubber ball can clearly be seen as the man did not move at all after being hit, and the ball simply bounced off him. The Panel cites case 0004-20 as an example. However, the advertisement in that case can clearly be distinguished to the current case, even on the citation put forward by the Panel. As noted in the Determination in relation to case 0004-20,

*“The Panel noted the advertiser features former cricketer Andrew Symonds who is known for shoulder charging a stalker during a cricket game in 2008, and that this advertisement is referencing this incident in a humorous manner. The Panel considered that the interaction between Symonds and the production assistant appeared sudden and unexpected. **The Panel considered that the production assistant is not seen to get back up and there is a suggestion that he is injured and may need chiropractic help. The Panel considered that this did constitute a depiction of violence.***

*A minority of the Panel considered that the violence in the advertisement was a lighthearted and slapstick reference to a well-known event and that this low level of violence was justifiable in the context of humorous advertising of a potential need for health insurance services.*

*The majority of the Panel considered that the violence in the advertisement was not mild, and that the casual violence shown was inappropriate in the circumstances. The majority of the Panel considered that the humour in the advertisement was dependent on the viewer’s recognition and knowledge of the previous incident, and that many viewers would not be aware of this. **The majority of the Panel considered that Symonds shows no remorse for the situation, and that the production assistant is not shown to get back up. The majority of the Panel considered that the depiction***



***does not show a resolution to the situation and that the viewer is therefore left with an impression of harm. The majority of the Panel considered that the depiction of purposefully and unapologetically injuring someone was not justifiable in the context of advertising flexible health insurance cover”***

(our emphasis)

In our current case, the man who was hit by the ball did not fall and was clearly shown to be unaffected by being hit by the ball. It is clearly seen that there is no negative affect of being hit. There is no harm and the audience can clearly see that. Given that there is no harm suffered by the man, we submit that the Panel should have followed previous cases (see above) in determining that there was no violence. Further, the Mike Iceberg character did not show remorse as there was no need to for the reasons stated earlier – there was no intent to cause harm and no harm was actually caused. Therefore, the actions of the Mike Iceberg character here are clearly different to the case relied on by the Panel.

#### **The man was not unhappy to have been hit**

The Panel states that the man appeared “unhappy to have had a ball hit him in the face”. This is incorrect. At no time whatsoever was the man who was hit in the face “unhappy” to have had the ball hit him. There is nothing in the Ad that suggests that he was unhappy to have been hit. Further, there is no reaction that indicates that he was unhappy. His reaction is more so one of surprise.

For the reasons set out above, Entain respectfully submits that there was a substantial flaw in the Determination, which was clearly made in error, and that the Ad did not breach section 2.3 (or any other section) of the AANA Code of Ethics.

#### **INDEPENDENT REVIEWER’S RECOMMENDATION**

##### **Request for review: Case Numbers 0293-21 and 0294-21**

I have been asked to review related cases. They concern two identical television advertisements by Entain, one on free-to-air television and the other on Pay-TV. A determination on 14 October 2021 by the Community Panel, by majority, upheld the complaints about the advertisements as in breach of section 2.3 of the AANA Code of Ethics. Entain discontinued the advertisement following the decision.

The Community Panel, by majority concluded that the ad did present or portray violence which was not justifiable in the context of the product or service advertised.

#### **Background**

The advertisement features three men in a kitchen. One man is juggling





apples and says he has three going at once. Another man shows his phone and states he has four. A voice-over gives details on a same race multi promotion. A third man has been shown close to a window, bouncing a ball off the window. Following the announcement by the second man, the third man throws the ball at the juggling man, hitting him in the face, and says: 'I'm not going to lie. You Ladbroked it. You Ladbroked it good', followed by a thumbs up sign – apparently congratulating the man with the phone who has 'one-upped' the juggler. The ad concludes with the 'Ladbrokes' logo on screen.

Ladbrokes is a company founded in Warwickshire, England in 1886. The company, which still exists, is synonymous with betting on horse-racing. Hence the reference to 'Ladbroking' in the advertisement, a reference confirmed by the image in the video on the second man's phone of horse racing and the Same Race Multi product promotion.

### **Complaints**

The complaints are that the advertisements breach section 2.3 of the *Code of Ethics* because they portray violence which is not justifiable in the context of betting online.

A sample of the complaints follows:

- *The incident ... in the Ad is clearly not an accident, it is a deliberate violent act of throwing a ball at another person's head. This violent act in no way is relevant to advertising a gambling app. ...[T]hrowing a ball between friends is a common practice and if the target person had caught the ball I would not have a problem with the ball being used in the Ad.*
- *[Entain's] target audience is 18 years of age or older, so why did this advert go out at 7.30pm when lots of younger impressionable people will still be watching.*
- *AND, let's be clear, it is most definitely a violent act to have something thrown AT, rather than TO, you.*
- *Because the man didn't flinch when hit, does that really mean he wasn't hurt as Entain asserts? ... The community standard surely is that inflicting this type of violence is not ok – government ads are now underscoring just that and that we all have a responsibility to speak up against violent or controlling behaviour.*
- *It doesn't matter that the ball was small and soft. With force and placement, almost any object can inflict harm.*
- *So how does this violent act have any relevance to the gambling product, anyway? ... Taking someone by surprise, that they can't defend themselves, is a cowardly act of violence.*
- *[T]here are more realistic attributes in the setting than not, so the*



*behaviour should reflect what would be socially acceptable today.*

- *The normalizing of violence in this way undermines community efforts to reduce domestic violence and that is prevalent alongside pub culture. It is outrageous that it trivializes the act and suggests the behaviour it is socially acceptable! The wrong message to send young people.*
- *It is an unnecessary violent act at a time when young children could still be watching TV. Advertising gambling apps should be banned like cigarettes and alcohol but this particular advert just goes too far!!*
- *The violence and throwing a ball in anger at a person, in this day and age to promote a betting product .... prays on people's weaknesses and addictions. It makes me absolutely sick.*
- *The violence is not in the force or hardness of the ball it's the mental damage caused by the degrading of that person. We need to stamp out attacks of this nature not make fun of them.*
- *I don't see how the scene is a fantastical work the people look real, it looks like a staff room kitchen to me and the window the ball is bounced off doesn't appear to be apartment like.*

### **Role of Reviewer**

The Independent Reviewer has a limited but important role. Having decided to accept the complaint for review, the Reviewer considers the decision of the Panel and makes a recommendation. In doing so, the Independent Reviewer's opinion is to decide, in this case:

- *Whether there was a substantial flaw in the Community Panel's determination (determination clearly in error having regard to the provisions of the Codes or Initiatives, or clearly made against the weight of evidence.*

The test depends on a finding of a 'substantial' or serious flaw in the Panel's reasoning, that the outcome is clearly against the weight of evidence, including errors in interpreting the relevant section(s) of the Codes and related material, or it is inconsistent with previous decision(s). The outcome may be to uphold the Panel's decision or, if the Independent Reviewer identifies such a flaw, the complaint is remitted to the Panel for reconsideration.

### **Panel's findings**

#### **Violence**

The Panel majority noted that the advertisement appeared to depict one character deliberately throwing a soft ball at the head of another character, in what appears to be a workplace. The finding was that the depiction of one person hitting another person in the head with a ball did constitute violence.



The minority considered that the ball that was thrown was soft and not likely to cause harm, the man was not shown to be physically harmed, and as such this would not constitute violence.

### **Context of the product or service advertised**

The majority considered that as the person who threw the ball was not seen to show remorse and purposefully throwing something at someone is not justifiable in the context of advertising a wagering product. They also considered that the man hit by the ball appeared unhappy to have had a ball hit him in the face. The Panel considered that the action was in the nature of bullying. They considered that throwing something at someone's head, even a soft ball, was violent and was not an appropriate action.

The minority considered that the advertisement was set in an every-day environment. And although the thrower of the ball was seen to be acting erratically, the setting was realistic and not fantastical. They also considered that the violence was slapstick and exaggerated and the man who was hit with the ball was not shown to be injured or in pain.

### **The advertiser's response**

The advertiser rejected the findings, saying of the advertisements:

- The person who throws the ball is a fictional character 'Mike Iceberg' introduced in earlier commercials, hired by Ladbrokes as the new 'Chief Entertainment Officer'. His task is to make racing even more entertaining. He has coined the expression 'Ladbroke It' which is used to illustrate everyday things becoming more exciting and entertaining.
- In the advertisement his response to the person who states he has four in the context of the Same Race Multi product is to congratulate the person with the 'You Ladbroke it good' etc comments and giving the thumbs up. His hitting the man who had been juggling, although indicating he was the loser, This indicates the surrounding positive (and not violent) nature of the Mike Iceberg's character's behaviour and actions. The person was not injured, nor was there a risk of injury given that the ball was a small soft rubber ball.
- Entain notes that the 'Mike Iceberg' character is in a room with three other friends/acquaintances. The company notes that throwing a small soft rubber ball at and between friends, including where the ball hits someone is a common activity amongst friends. It is particularly common amongst 'sporty' type friends. Just because the ball hits the person on the head in no way indicates that the act is violent or portrays violence.
- The AANA Code for Advertising and Marketing Communications to Children did not apply as the Ad, having regard to the theme, visuals and language used, was not directed primarily to children or for a product targeted toward or having principal appeal to children.



## **Consideration**

The section against which this assessment was made by the Panel is the Code of Ethics section 2.3. Section 2.3 states:

*Advertising or Marketing communications shall not present or portray violence unless it is justifiable in the context of the product or service advertised.*

This section requires the Panel to make two findings: the first is whether there is a depiction of violence in an advertisement; the second is to decide, if there is violence, whether it is justifiable in the context of the product or service being advertised.

## **Violence**

Violence is at the forefront of many of the complaints. The word ‘violence’ is not defined in the AANA Code of Ethics, nor in the related Practice Note. The Practice Note, however, does acknowledge that –

*... graphic depictions of violence or a strong suggestion of menace have been found to present violence in an unacceptable manner especially when visible to a broad audience which includes children.*

The dictionary meaning is the meaning violence bears in ordinary speech in the community.

Complaints were also made of ‘bullying’. Conduct falling within that term is not referred to in section 2.3. It is found in section 2.6 in relation to health and safety, a section not referred to in the Panel’s findings. The Practice Note says of bullying:

*Bullying – the age of the people depicted in an advertisement, their relationship to each other and the nature of the communication are relevant in determining whether an advertisement constitutes bullying and is contrary to Prevailing Community Standards.*

Given that there does not appear to be any difference in age between those involved in the advertisement, nor any repetition of the conduct (a feature of bullying behaviour) and given the absence of discussion by the Panel of this aspect of the complaints, the absence of comment by the Panel is, in my view, appropriate.

## **Violence**

‘Violence’ is relevantly defined as:



1. *Rough force in action*: the violence of the wind. 2. *Rough or injurious action or treatment*: to die by violence. 3. *Any unjust or unwarranted exertion of force or power, as against rights, laws, etc*: injury; wrong; outrage. (Macquarie Concise Dictionary (5<sup>th</sup> edn, 2009) 1407.)

The advertisement shows three men, roughly the same age, in a room in what appears to be a domestic dwelling. One is juggling three apples; one is looking at his phone; and the third (the 'Mike Iceberg' character) is repeatedly throwing a ball against a glass panel in a window. The throwing of the ball against the glass which does not break or shatter is the indicator that this is a soft ball and the image indicates it is a small ball.

The men are all involved in a form of activity requiring skill or luck; one throwing and catching a ball; another apparently betting on his phone; and the third is juggling. In response to the announcement by the man who is juggling that he has 'three going at once', the man on the phone goes 'one-up' by announcing that he has four – apparently a bet on a Same Race Multi promotion. The ball-throwing character reacts by throwing the small soft ball at the man who had been juggling which hits him on the face. He is the loser as between the juggler and the one betting. He follows this up with the words 'You Ladbroke it. You Ladbroke it good' addressed to the man with the phone.

The juggler man who has been hit, barely blinks and looks otherwise unperturbed. There is no menace, nor aggression in the throwing of the ball. The action is light-hearted and the fact that the man hit by the ball barely reacts is an indication that the action was acceptable and not menacing.

The words 'You Ladbroke it. You Ladbroke it good' are clearly congratulatory of the man with the phone. There is no injury to the juggling man, and the action does not exhibit 'rough force' or 'injurious action'. The relationship between the three men, though competitive, is apparently friendly and playful. The ball-throwing and hit to the face has minimal impact as the recipient's reaction indicates and has not led to any affront.

In these circumstances, the case differs from the outcomes in Case 0004-20 where the person is knocked over, and Case 0325-20 where the ball to the head results in the man falling backwards. Nor is the ball-throwing action aggressive, leading to anxiety on the part of those involved. This can be compared with Case 0113-18 where the actions of the woman aggressively beating the pinnata was frightening to the children present.

The action of throwing the ball had had no harmful effects and is a piece of 'horse-play' between three adult males in a contrived competitive environment, of the kind Mike Iceberg has been employed to produce to make racing more



entertaining and exciting. To interpret that action as violent action which was not justified in the context of the betting product being advertised involves a substantial flaw.

### **Conclusion**

Accordingly, I recommend that the Panel reconsider the decision.

### **THE DETERMINATION ON REVIEW**

The Ad Standards Community Panel (Panel) noted the request for review of its decision and the findings of the Independent Reviewer.

The Panel noted that the Independent Reviewer considered that there were substantial flaws in the Panel's determination. Specifically, the Independent Reviewer noted that the Panel had given insufficient consideration to the definition of violence.

The Panel noted that it needed to reconsider the case under Section 2.3 of the the AANA Code of Ethics (the Code) taking into account the Independent Reviewer's recommendations and comments.

#### **Section 2.3: Advertising shall not present or portray violence unless it is justifiable in the context of the product or service advertised**

##### **Does the advertisement contain violence?**

The Panel noted that the advertisement appeared to depict one character deliberately throwing a soft ball at the head of another character.

The Panel noted the reviewer's assessment that when considering whether an action is violent the Panel should take into account the dictionary definition.

The Panel noted the Independent Reviewer had provided the following definition:

Violence' is relevantly defined as:

1. *Rough force in action*: the violence of the wind. 2. *Rough or injurious action or treatment*: to die by violence. 3. *Any unjust or unwarranted exertion of force or power, as against rights, laws, etc*: injury; wrong; outrage. (*Macquarie Concise Dictionary (5<sup>th</sup> edn, 2009) 1407.*)

The Panel acknowledged that most members of the community would understand the dictionary meaning to be an accurate reflection of the ordinary meaning in the community. However, the Panel noted that as the Code itself did not contain a definition of violence, and the Practice Note to the Code did contain some



commentary on the interpretation of violence under the Code, it may take a broad view of the meaning of violence. The Panel noted that it had previously found the portrayal of threatening, menacing or aggressive acts to constitute violence. The Panel considered that whether an act was violent within the meaning of the Code or not differs depending on the context and content of individual advertisements.

The Panel considered that the behaviour took place in a realistic setting. The Panel noted that the Mike Iceberg character may have appeared in other fantastical advertisements, however in the current advertisement the actions of bouncing a wall against a window and then throwing it at somebody were not exaggerated or unrealistic. The Panel noted that the advertisement could be seen in isolation by viewers unfamiliar with the series of advertisements, and therefore the content of this advertisement would need to be considered on its own.

The minority of the Panel considered that most people would not like to have a ball thrown at their face, regardless of whether it was soft or not, whether at work or at home. The minority of the Panel considered that the action was aggressive and the reaction of the man who had been hit in the face was not positive. The minority of the Panel considered that the aggressive behaviour was not reciprocated, and the depiction was of one person directing rough behaviour at another. The minority of the Panel considered that the action was unnecessarily aggressive. The minority of the Panel considered that there is growing community concern about the normalisation of violence and aggression in the media and in society, and that community standards are changing in relation to what is appropriate to show in advertising. The minority of the Panel considered that the depiction of one person hitting another person in the face with a ball did constitute violence, albeit at a low level, and was irrelevant to the product being advertised.

The majority of the Panel considered that the ball that was thrown was soft and not likely to cause harm. The Panel considered that the man was not shown to be physically injured and the action was not likely to result in injury. The Panel considered that the ball was thrown as part of a humorous situation between peers, and that the behaviour was a depiction of harmless horseplay rather than violence within the meaning of the dictionary definition or common community understanding.

### **Section 2.3 Conclusion**

On review, the Panel determined that the advertisement did not present or portray violence and did not breach Section 2.3 of the Code.

### **Conclusion**

Finding that the advertisement did not breach Section 2.3 of the Code, the Panel dismissed the complaint.