

Case Report

1. Case Number :	0211-23
2. Advertiser :	Betfair Australia
3. Product :	Gambling
4. Type of Advertisement/Media :	TV - On Demand
5. Date of Decision:	11-Oct-2023
6. Decision:	Dismissed

ISSUES RAISED

AANA Wagering Code\2.5 Promise of winning

DESCRIPTION OF ADVERTISEMENT

This on demand TV advertisement features a voice-over saying, "Betfair loves winning punters. We're on your side this spring racing carnival. Offering expert tips, unique ways to bet, responsible gambling tools. When you win, we win. Join the Betfair community today. Experience the Betfair difference this spring. Betfair, on your side."



**WE'RE ON YOUR SIDE
THIS SPRING RACING
CARNIVAL**

THE COMPLAINT

Comments which the complainant/s made regarding this advertisement included the following:

The ad talked about the gambling company being 'on your side' with odds stacked in your favour. It promoted gambling in a way that did not outline the risks associated with gambling nor the odds being against you winning.

THE ADVERTISER'S RESPONSE

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

Betfair, a company incorporated in Australia, is a wholly owned subsidiary of Crown Resorts Limited. Betfair commenced operations in Australia in 2006 and currently has approximately 120 employees, with offices in Darwin and Melbourne.

Betfair is not a corporate bookmaker. Betfair operates a betting exchange (known as the 'Betfair betting exchange') pursuant to a Betting Exchange Operator Licence issued by the Northern Territory Racing Commission.

The Betfair betting exchange, which is owned by an entity in the Flutter Group of companies, is a global exchange that allows customers from all over the world to bet against each other. Pursuant to commercial agreements between Betfair and the Flutter Group, Betfair offers the Betfair betting exchange to its customers which are located in Australia and New Zealand.

A betting exchange is an online platform that enables customers to bet against each other on an event at a known price they set. It operates in a manner resembling a stock market, in that customers can either back (i.e. buy) or lay (i.e. sell) an outcome on a racing, sporting or other event (e.g. Federal Election). Betfair's business model is very different to that of bookmakers (e.g. Sportsbet) and totalisator operators (e.g. TAB). In particular:

(a) the betting exchange model generates revenue via commission charged on a customer's net winnings on a betting market. By contrast, bookmakers generate revenue when customers lose, and totalisator operators take a set percentage from the pool of all bets before distributing the remaining amount to winning customers;

(b) because Betfair does not hold the risk on customers' bets, it does not restrict the size of their bets (as many bookmakers do);

(c) when customers bet using the betting exchange they are betting at a known price. By contrast, when they bet into the totalisator pools the odds are not known at the time of bet placement; and

(d) because the betting exchange requires opposing bets that match, customers have the ability to trade, for example betting that an event will occur (a "back bet") at odds of \$4.00 and then "trading out" by betting that the event will not occur (a "lay bet") at odds of \$2.00.

The Advertisement

Betfair's advertisement is part of its campaign using the slogan "when you win, we win". The Advertisement was created by Betfair and was also booked by Betfair.

The purpose of the campaign is to distinguish Betfair from corporate bookmakers by emphasising some of the aspects of its business model as outlined above. Some of the differences between the Betfair betting exchange model and traditional book making are shown on screen in the Advertisement in the following quotes from consumers:

- *"THEY LET YOU CONTROL THE PRICE"*
- *"YOU SET YOUR OWN ODDS, DON'T TAKE THE UNDERS THAT THE CORPORATES GIVE YOU"*
- *"THEY LISTEN TO YOUR FEEDBACK!"*
- *"YOU CAN BE THE BOOKMAKER!"*

Those points of difference, and the fact that Betfair generates revenue via commission charged on a customer's net winnings on a betting market, allow Betfair to make the claim in the Advertisement that it is "ON YOUR SIDE".

The complaint

Betfair understands that a complaint has arisen in relation to the broadcast of the Advertisement on or about 12 September 2023. The complaint raises issues under the Wagering Advertising Code (Code). Betfair agrees that the Code applies to the broadcast of the Advertisement.

The complaint raises issues under section 2.5 of the Code, namely that advertising or marketing communication for a wagering product or service must not state or imply a promise of winning. In Betfair's view, no other section of the Code arises for consideration. Specifically, the Advertisement does not feature any minors or any person engaged in wagering activities (sections 2.1-2.3); does not portray the consumption of alcohol or allude to a person with financial or personal difficulties (sections 2.4 and 2.6); does not imply a link between wagering and sexual success (section 2.7); does not portray excessive participation in wagering or peer pressure to wager (sections 2.8-2.9).

The Advertisement includes on screen the words "IN FACT, WHEN YOU WIN WE WIN." This part of the advertisement is matched with a voiceover which states, "when you win, we win." The Advertisement also includes the words "on your side".

Betfair submits that neither the above portions of the Advertisement or any other part of the Advertisement states or implies a promise of winning. Rather, the Advertisement states clearly what will happen "when" a punter wins. That is, in the circumstances where a punter wins, Betfair also wins in that it earns a commission. The section 2.5 Practice Note states that "advertising or marketing communications 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". In Betfair's view, the Practice Note applies directly to the Advertisement which refers to (or

“depicts”) winning on a wager in the words used on screen and the voiceover but does not suggest, either directly or implicitly that winning will be a definite outcome of wagering.

Notably, the Advertisement concludes with the written and spoken message as required by legislation. The message states “CHANCES ARE YOU’RE ABOUT TO LOSE”. Although the message is legally required, its placement at the end of the Advertisement immediately following the words “ON YOUR SIDE”, strongly reinforces to viewers that the reference to winning in the Advertisement, is a reference merely to the chance of winning and that, in fact, most punters will place a losing bet. This also accords with the understanding of most viewers, as noted by Ad Standards previously[1], that using a betting service comes with an inherent possibility of loss. The Advertisement should be looked at in its totality and, when that is done, it is clear there is no promise of winning.

In Betfair’s view, the phrase “when you win, we win” is interchangeable in terms of meaning in this case with the phrase “if you win, we win”. Both convey a sense of what will happen in future, namely that Betfair “wins” its commission in circumstances where the punter has a winning bet. Equally, if the punter does not win, then Betfair does not earn a commission. Whilst Betfair does not believe that the statement guarantees winning or that the Advertisement as a whole creates such impression, it has nonetheless decided that the production of any new materials as part of this campaign going forward will use the phrase “if you win, we win” in place of “when you win, we win” in the hope that this avoids any future complaints.

As an aside, we note the complainant suggested that “The ad talked about the gambling company being ‘on your side’ with odds stacked in your favour”. There is no reference in the Advertisement to odds being stacked in favour of customers.

For the reasons set out above, Betfair submits that the complaint should be dismissed.

[1] See for example, Case Report 0062-23 (14 June 2023); Case Report 0107-22 (25 May 2022)

THE DECISION

The Ad Standards Community Panel (the Panel) considered whether this advertisement breaches the AANA Wagering Advertising and Marketing Communication Code (the Wagering Code).

The Panel noted the complainant’s concern that the advertisement suggests that the company is on your side and stacks the odds in the favour of those placing a bet, implying a promise of winning.

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

The Panel 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.

Section 2.5 Advertising or Marketing Communication for a Wagering Product or Service must not state or imply a promise of winning

The Panel noted the Practice Note to this section of the Wagering Code:

“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 Panel considered that some viewers may interpret the advertisement as an implication that the wagering company is on the side of punters and therefore the odds are stacked and a win is guaranteed.

However, the Panel noted that the business model of Betfair is that the company takes a commission from winners (as well as the bet of losers) and that therefore it makes no difference to them if punters win or lose.

The Panel considered that while the advertisement may give a suggestion that the wagering company is ‘on your side’ and there is a strong suggestion of success, there is no explicit or implied *promise* of winning.

The Panel considered that the phrase “when you win, we win” was not enough to suggest that winning would be a definite outcome of participating. The Panel noted that the advertiser has indicated that in future it will use the word “if” rather than “when” to avoid any impression that winning is guaranteed.

Section 2.5 Conclusion

The Panel considered that the advertisement did not state or imply a promise of winning and determined that the advertisement did not breach Section 2.5 of the Wagering Code.

Conclusion

Finding that the advertisement did not breach the Wagering Code on other grounds, the Panel dismissed the complaint.