

Case Report

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| 1. Case Number : | 0084-24 |
| 2. Advertiser : | GameDay Squad |
| 3. Product : | Gambling |
| 4. Type of Advertisement/Media : | TV - Free to Air |
| 5. Date of Decision: | 3-Apr-2024 |
| 6. Decision: | Upheld – Modified or Discontinued |

ISSUES RAISED

AANA Wagering Code\2.1 Directed to Minors

AANA Advertising to Childrens Code\2.1 Prevailing Community Standards

DESCRIPTION OF ADVERTISEMENT

This advertisement promotes a fantasy football competition and features the statement "turn game day into pay day".



THE COMPLAINT

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

Advertising for a competitive gambling platform during morning children's television programs (9GO). Platform is disguised as a fantasy sports "player card" collection. Does not mention in-game purchases required, tiered participation to actually receive cash, or conditions for cash withdrawal.

THE ADVERTISER'S RESPONSE

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

Game Day Squad is an online E-game tournament and competition platform, focusing on its operation within Australian legal boundaries. Our analysis conclusively shows that GDS operates as a skill-based gaming platform, distinct from traditional gambling, thus negating the need for a gambling license under Australian law and therefore attesting its legality to advertise without the need for a license. Based on the above in conjunction with Clear Ads approval the complaints towards section 2.1 is not applicable.

THE DECISION

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

The Panel noted the complainant's concern that the advertisement is targeted towards children.

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

The Wagering Code

The Panel considered the advertiser's assertion that the Wagering Code does not apply to the advertisement as the advertiser is not a "Licensed Operator" as defined in the Wagering Code.

The Panel noted that a Licensed Operator is defined as "a person or company licensed in a State or Territory of Australia to provide Wagering Products or Services to customers in Australia".

The Panel noted that a Wagering Product or Service is defined as "product or service, provided by a Licensed Operator, which offers betting on horse races, harness races, greyhound races, sporting events, novelty events or other contingencies (or a series of races, events or contingencies); but does not include gaming, such as casino games or electronic gaming machines, keno, lotto and lottery products or trade promotions. For the purposes of this code, Wagering Product or Service includes betting on fantasy sport teams, odds compilation and tipping services offered or provided by a Licensed Operator".

The Panel concluded that although the advertiser is promoting a service in which people can bet on fantasy sport teams, the advertiser is not a Licensed Operator and therefore the provisions of the Wagering Code do not apply.

The AANA Children's Code

The Panel noted that for the provisions of the Children's Code to apply, the advertisement must be found to target children under 15 years of age.

Does the advertisement target children?

The Panel noted that the Children's Code defines "target children" as:

"Target Children is determined by the context of the advertisement and the following three criteria:

- 1. Nature and intended purpose of the product being promoted is principally or significantly appealing to Children;*
- 2. Presentation of the advertisement content (e.g. theme, images, colours, wording, music and language used) is principally appealing to Children;*
- 3. Expected average audience at the time or place the advertisement appears includes a significant proportion of Children."*

The Panel noted that the Practice Note provides guidance on the interpretation of "target children":

"All three criteria will be considered by the Community Panel in determining whether or not advertising targets Children. The weighting given by the Community Panel to each of the three criteria will be determined on a case by case basis. In the event of a complaint being considered by the Community Panel, the advertiser should be in a position to provide details in terms of the nature and intended purpose of the product, the presentation of the advertisement content and the expected average audience at the time or place the advertisement appears.

"In relation to the third criteria, measures to determine if Children are likely to be a 'significant proportion' of the expected average audience may include one or a combination of the following:

- Where data exists, 25% or more of the predicted audience will be Children. In relation to outdoor advertising, if across a campaign the data shows a predicted audience with less than 25% Children, and there is a Children's event or concert that is incidental to the ad placement, the audience of that incidental Children's concert or event will not be captured.*
- C&P programmes.*
- Programs, artists, playlists, video, movies, magazines or other content with significant appeal to Children (e.g. featuring personalities or characters popular with Children).*
- Compliance with the Outdoor Media Association Placement Policy and Health & Wellbeing Policy which regulate the placement of advertising at primary*

and secondary schools which are locations where Children regularly and predictably gather. Where accurate program audience data is not available, the Community Panel may have regard to other factors listed above such as the program content, the time or the location where the advertisement is being shown (in line with the above provision)."

Point 1: Is the nature and intended purpose of the product principally or significantly appealing to children?

The Panel considered that the advertisement is promoting a fantasy sports competition and considered that this theme would be significantly appealing to children, not unlike sports tipping competitions.

Point 2: Is the content of the advertisement principally appealing to children?

The Panel considered the imagery in the advertisement is quite dull with no complex animations/cartoons, no bright colours, and a fairly dark theme overall. The Panel noted there is no background music, only a single man speaking.

The Panel considered that the overall content of the advertisement was not principally appealing to children.

Point 3: Does the expected average audience of the advertisement include a significant proportion of children?

The Panel noted that the complainant viewed this advertisement during the children's program "Bakugan: Evolutions" on a Sunday morning on channel NineGo, and in other unspecified morning timeslots. The Panel noted that Sunday mornings on NineGo are dedicated to children's programming.

The Panel considered that although it did not have exact audience data from the advertiser, given the programming the audience of the advertisement would be primarily children under 15.

The Panel considered that the weekend schedule consistently demonstrates children's programming, and it was within the advertiser's power to opt out of placement during that time on that channel.

Targeting children conclusion

The Panel considered that while the content of the advertisement would not be principally appealing to children, the advertised product would have significant appeal to children and the expected average audience of the advertisement is likely to

include a significant proportion of children. Overall, the Panel considered the advertisement was targeting children.

Children’s Code Section 2.1: Advertising to Children must not contravene Prevailing Community Standards.

The Panel noted that the Practice Note includes:

“Advertising to Children must not contravene prevailing community standards, including by promoting products or services unsuitable or hazardous to children or encouraging unsafe practices. Advertising to Children that encourages bullying or promotes unhealthy ideal body image may also breach this rule.”

The Panel considered that a fantasy sports product in which people bet on the outcome and which involves a premium (buying extra cards) is unsuitable for Children. The Panel considered that advertising such products to children is against prevailing community standards.

Children’s Code Section 2.1 conclusion

The Panel considered that the advertisement was contrary to prevailing community standards and found that it did breach Section 2.1 of the Children’s Code.

Conclusion

Finding that the advertisement did breach Section 2.1 of the Children’s Code, the Panel upheld the complaint.

THE ADVERTISER’S RESPONSE TO DECISION

We write on behalf of Game Day Squad in response to the current proceedings initiated by the Ad Standards Community Panel. We acknowledge the critical role played by your organization in upholding advertising standards in Australia and appreciate the Panel's dedication to this matter. However, we respectfully request the following actions:

1. **Non-Publication of the Current Case Report:** We request that the case report as drafted not be published in its present form.
2. **Dismissal or Review of the Complaint:** We submit that the complaint in question be dismissed, or alternatively, subjected to a thorough review.

These requests are premised on the following detailed considerations:

Compliance and Regulatory Observance: Game Day Squad has consistently endeavored to ensure that all marketing efforts strictly adhere to relevant legal standards and advertising codes. This commitment is evidenced by the

comprehensive pre-clearance process our advertisement underwent through ClearAds Australia, which included the following stages:

- **Pre-check:** Assessment of scripts and storyboards against regulatory requirements.
- **Submission:** Uploading of the final advertisement and supporting documents.
- **Review:** Evaluation within the specified timeframe, with provision for feedback.
- **Approval:** Issuance of a classification and a unique ClearAds number for ongoing compliance monitoring.

The advertisement in question received a classification of 'G', affirming its suitability for general viewing, as per the guidelines set by the Commercial Television Industry Code of Practice administered by Free TV Australia.

Specific Compliance with the Commercial Television Industry Code of Practice: Our adherence to the Commercial Television Industry Code of Practice is particularly relevant here, given the advertisement's medium. The Code dictates content standards specifically designed to reflect community standards and expectations, including:

- **Classification Zones:** The advertisement's 'G' rating allows for its broadcast at any time under clause 2.2.1.
- **Regulations on Betting and Gambling Ads:** Our advertisement does not fall within the prohibitions outlined in section 6.5, as it does not promote betting or gambling in the conventional sense.

Game Day Squad demonstrated diligent compliance by conducting thorough pre-clearance through ClearAds Australia for its advertising campaigns. Furthermore, these campaigns were broadcast on Channel 9, which not only served as Game Day Squad's agent but also enhanced the campaign's reach by providing additional bonus spot allocations. The adherence to advertising standards is further corroborated by an attached letter from Channel 9, confirming the broadcast under the 'G' classification, thus ensuring the content was appropriate for general audiences.

Please refer to the evidence attached to this email clearly showing the first letter of the Clear Ads Number. 'G' is for General.

Nature of the Game Day Squad Offering: It is critical to underline that Game Day Squad's offerings constitute fantasy sports competitions, which are legally recognized in Australia as games of skill, not chance. Participants rely on their knowledge and strategic ability to assemble teams based on real-life sports statistics, distinguishing these activities from betting.

Legal Precedent and Definitions: The Australian legal framework, including the Wagering Advertising Code adopted by the Australian Association of National Advertisers (AANA), supports our position. Fantasy sports, by their nature, do not involve wagering on uncertain outcomes but instead require skill in predicting sports

performances. This distinction exempts our operations from the regulations targeting traditional gambling and wagering advertising.

In light of these assertions and considering the rigorous compliance measures undertaken prior to the advertisement's broadcast, we respectfully assert that the complaint lacks merit and warrants dismissal. Furthermore, we request that the case report, as currently formulated, be published to prevent any undue prejudice or misrepresentation of Game Day Squad's diligent adherence to advertising standards.

We trust that this letter clarifies the position of Game Day Squad and demonstrates our commitment to ethical advertising practices. We are prepared to provide further information as needed and eagerly await your decision on this matter.

Despite Game Day Squad acting upon the initial assertion and advice received from both ClearAds Australia and Channel 9, due to the communications from Ad standards, we immediately had the advertisement discontinued.

Game Day Squad acted swiftly to discontinue the advertisement in response to Ad Standards' concerns. As such, if you choose to proceed with publishing this report despite the comprehensive evidence provided by Game Day Squad, ClearAds Australia, and Channel 9, it is essential to accurately reflect the nature of our offerings in accordance with the Australian legal context.

Fantasy sports in Australia are legally recognized as games of skill. Participants rely on their understanding and strategic acumen to assemble teams that excel based on real-world sports data. This is a significant distinction from traditional forms of betting and wagering that are largely dependent on chance. Our fantasy sports offerings do not involve betting on uncertain outcomes or feature mechanisms such as purchasing additional cards as a central aspect.

We adhere strictly to legal standards that categorize these contests as skill-based activities, distinctly separate from gambling. This designation is vital for upholding the integrity and desirability of fantasy sports, highlighting them as competitive, knowledge-driven endeavors rather than gambling.

We request that the report's language be revised to simply state, "The Panel considered that advertising such products to children is against prevailing community standards," and remove the assertion that "The Panel considered that a fantasy sports product in which people bet on the outcome, and which involves a premium (buying extra cards)." This would provide a more accurate representation of our operations and the legal landscape surrounding fantasy sports in Australia.

Our primary request is for this matter to be dismissed entirely, with no report published. We believe that the actions taken and the compliance measures implemented by Game Day Squad, in conjunction with the clarifications provided regarding the nature of our offerings, should sufficiently address any concerns raised.

By opting not to publish a report, it would reflect a recognition of our proactive and responsible approach in handling the advertising issue, thereby maintaining the integrity of all parties involved.
Thank you for your consideration.