

Case Report

1. Case Number :	0121-24
2. Advertiser :	Hillside (Australia New Media) Pty Limited (t/a bet365)
3. Product :	Gambling
4. Type of Advertisement/Media :	TV - On Demand
5. Date of Decision:	15-May-2024
6. Decision:	Dismissed

ISSUES RAISED

AANA Advertising to Childrens Code\2.1 Prevailing Community Standards
AANA Wagering Code\2.1 Directed to Minors

DESCRIPTION OF ADVERTISEMENT

This on demand TV advertisement features a stadium of people watching a sports game and cheering. The Bet365 logo is highlighted around the stadium and at the end of the ad there is a QR code for viewers to scan.



THE COMPLAINT

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

While watching "Prisoner" on 10 play our family was constantly shown multiple adds regarding Bet 365---These ads had a bar code inviting viewers to get their phones and take a shot of the barcode it was shown multiple times it was nothing short of trying to brain wash viewers to get involved with gambling--this particular ad in our families view was directed at especially younger members of our community and "CHILDREN"--it is a total disgrace that any TV station would allow this add to be shown--I am also writing to the federal member Andrew Wilkie as well as our local member for it to be mentioned in parliament.

THE ADVERTISER'S RESPONSE

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

Placement of the advertising:

The Complaint refers to an advertisement for HANM, trading as bet365 (Advertisement) seen on 10Play, an on-demand video platform offered by Network 10, between the hours of 7.30pm and 9.30pm.

HANM carefully considers all advertising placements to ensure that its advertising does not appear in any mediums that are directed at younger audiences. The Advertisement was served as part of a campaign in which advertising is dynamically inserted into the commercial breaks of appropriately rated programmes accessed through the on-demand platform, 10Play. Unlike traditional broadcast media, because the content is accessed by logged-in users, targeting criteria can be applied to ensure that advertising is only served to appropriate accounts and around appropriate media. The parameters for serving HANM's advertising include a minimum viewing age of 18+, and controls to ensure that advertising is not served to accounts that have been designated as a child's account (regardless of the content being viewed). Content controls are also applied to exclude advertising around live sport and children's programming, and ensure advertising is not served during morning or evening timeslots where children are likely to be watching.

The Complainant states that they saw the Advertisement when watching the TV programme Prisoner, a prison drama dealing with mature themes and classified for a Mature (M) audience. Australian Classification considers a programme rated as M as not recommended for children under the age of 15 and includes portrayals of elements such as violence and themes that require a mature outlook . We understand that the

programme includes themes of violence, nudity, drug-use and gambling. The programme does not portray themes or characters of particular appeal to under-18s, and is not directed to children. Furthermore, the Prisoner programme was produced between 1979 and 1986, and is therefore most likely to appeal to and be viewed by an older audience familiar with a TV series from that era.

The Advertisement appeared in the 7.30pm to 9.30pm timeslot, which is associated with programmes that are for a more mature audience and is not associated with programmes that are targeted or appropriate for children. This placement complies with the timeslot restrictions for gambling advertising contained in Article 6.5.1 of the Free TV Commercial Television Industry Code of Practice 2018.

Frequency controls are also applied as part of this campaign, to ensure that the advertising is not excessive. For this campaign, a frequency cap was set to limit the number of Advertisements to no more than two, per viewer, per session. This confirms that the frequency of the Advertisement was not excessive, and HANM rejects any claim made by the complainant to the contrary.

For the reasons outlined above, we are confident that the placement of the Advertisement was appropriate and not targeted or directed to children.

Content of the Advertisement:

The Advertisement itself has also been carefully reviewed before publication, to ensure that it is appropriate and does not contain any elements that are intended for or directed to children.

HANM offers sports betting products and services which are only available for adults and not for a demographic that is under 18 years old. The licensed online wagering services provided by HANM are solely for individuals that are 18 years and older, and, prior to the use of the wagering services, an individual is required to undergo a registration and verification process that confirms that the individual is at least 18 years old.

In light of the above, HANM ensures that its advertising does not target or appeal to an audience that is under 18 years old, and develops its advertising with the target audience of 25+ in mind.

The Advertisement referred to in the Complaint:

- depicts a cheering crowd in a stadium atmosphere, reacting to something happening off-screen;*
- does not feature any individuals, whether actually or appearing to be, under the age of 25;*

- *includes classical music of a kind that is not associated with youth culture or of particular appeal to minors;*
- *does not depict any characters, themes, visuals, or language directed at under-18s;*
- *makes reference to the bet365 brand but does not depict any gambling activities or products. Indeed, the Advertisement is a bumper ad announcing the programme as 'Brought to you by bet365' and makes no claims or statements about HANM or gambling products;*
- *includes a responsible gambling message which is shown on the full screen and is also spoken; and*
- *provides a QR code which allows an individual to access the bet365 website, which requires to be age verified as 18+ before accessing gambling products.*

The above confirms that the Advertisement is not intended for or targeted to children or minors.

Compliance with Advertising Codes:

The Complaint alleges that the Advertisement raises concerns under clauses 2.1 in each of the AANA Advertising to Children Code, and the AANA Wagering Code. Below is HANM's review of these clauses with reference to the Advertisement subject of the Complaint.

1) AANA Advertising to Children Code

Clause 2.1 of the AANA Advertising to Children Code (the ATCC) requires that Advertising to Children must not contravene Prevailing Community Standards.

HANM submits that the Advertisement does not breach this requirement.

HANM, by means of the Advertisement's content and placement as outlined above, takes care to ensure it does not direct its advertising to children. The ATCC provides a definition for advertising to children and HANM submits that the Advertisement clearly does not meet the criteria under the definition:

- *the licensed online wagering services promoted in the Advertisement are not principally or significantly appealing to persons under the age of 15 years or intended to be appealing to such persons. Indeed, the Advertisement does not portray any gambling activities or products;*
- *the presentation of the Advertisement is not principally appealing to a person under the age of 15 years – as outlined above, due to the age restricted nature of HANM's products and services, the Advertisement is intended for an audience that is over 18 years old and is presented in this manner, featuring actors who are all over the age of 25;*
- *in particular, the Advertisement does not make use of any themes, imagery or language that would be of appeal to young persons; and*

- *the expected average viewing audience at the time and placement where the Advertisement appears does not include a significant proportion of persons under the age of 18 years. As outlined above, the Advertisement was served:*
 - o *around a TV series with a Mature rating that is intended for an older audience, and which does not feature themes of particular appeal to under-18s;*
 - o *on a video on demand service where campaign settings have been applied to ensure that the Advertisement is only served to accounts registered to appropriately aged users, and excluding viewers of Live Sport and Children’s programming. HANM advertisements are never inserted into programmes viewed by accounts allocated by the account holder as a children’s account; and*
 - o *at a timeslot (i.e. 7.30pm to 9.30pm) which is associated with programmes that are intended for older audiences. In particular, this ad placement complies with the placement restrictions contained in Article 6.5.1 of the Free TV Commercial Television Industry Code of Practice 2018. HANM applies campaign settings which ensure that advertisements are not displayed at times when children are likely to be watching.*

As a result of the above, HANM considers that it is not in breach of the requirement under clause 2.1 of the ATCC because it is not advertising to children.

Further, HANM submits that the Advertisement does not contravene prevailing community standards because the Advertisement is presented in a manner that is principally appealing to an adult audience (as outlined in the above explanation of the Advertisement). The Advertisement has been placed around a Mature-rated programme from the 1970s and 80s, that is therefore most likely to be associated with an adult audience and not with children.

2) AANA Wagering Code

Clause 2.1 of the AANA Wagering Code (the Wagering Code) requires that Advertising or Marketing Communication for a Wagering Product or Service must not, having regard to the theme, visuals and language used, be directed primarily to Minors.

HANM submits that the Advertisement does not breach this requirement.

As outlined above, the Advertisement is presented in a manner that is intended to appeal to HANM’s target demographic, which is an audience that is over 18 years old. As described above, the Advertisement depicts an adult audience cheering in a stadium and makes reference to the bet365 brand. The classical music that is used in the Advertisement is not appealing to persons under the age of 18 years old and is usually associated with an adult audience. The Advertisement does not include any elements that are targeted to persons under the age of 18 years old. There are no themes, visuals, or language used which would be of appeal to under-18s. The Advertisement does not depict any products or services of appeal to young persons.

The Advertisement includes a QR code which allows a person to access the bet365 website, which requires users to be verified as aged 18 or over in order to access gambling products.

Further, the Advertisement includes a responsible gambling message which refers an individual to the risks of gambling and information relating to where to seek help.

3) AANA Code of Ethics

Ad Standards makes reference in the Letter to section 2 of the AANA Code of Ethics (the Code of Ethics). HANM submits that the Advertisement does not breach any of the requirements under section 2 of the Code of Ethics.

In the list below we have provided an assessment of the Advertisement in relation to each rule under section 2 of the Code of Ethics:

- 2.1: Discrimination or vilification – the Advertisement does not include or depict scenes which are discriminatory or which vilify any persons;*
- 2.2: Exploitative and degrading – the Advertisement does not include images of minors or people who appear to be minors and does not exploit or degrade individuals. All individuals featured in the Advertisement have been verified to be over the age of 25;*
- 2.3: Violence – the Advertisement does not include violence;*
- 2.4: Sex, sexuality, and nudity – the Advertisement does not include reference to sex, sexuality, or nudity;*
- 2.5: Language – the language used in the Advertisement is appropriate and no strong or obscene language is used. No claims or statements are made about gambling products;*
- 2.6: Health and Safety – the Advertisement does not include or encourage unhealthy or unsafe behaviour, and includes a responsible gambling message with information where help may be sought; and*
- 2.7: Distinguishable as advertising – the Advertisement is clear that it is an ad for bet365 and its services.*

THE DECISION

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

The Panel noted the complainant’s concerns that the advertisement is inappropriate for an audience which includes children.

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

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

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).*

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

The Panel considered that the advertised product is a gambling product. The Panel considered that the details of the product would not be clear to children viewing the advertisement. The Panel considered that the Bet 365 logo and details are unlikely to be principally or significantly appealing to children.

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

The Panel considered that the content of the advertisement, including the crowd in a stadium, the promotion of the product, and the call-to-action to download the app by using the QR code, would be unlikely to attract the attention of children.

The Panel noted the complainant's concern that the advertisement was targeting children through the use of the QR code.

The Panel considered that QR codes are becoming more common in advertising all kinds of products, and that they are something that is utilised by people of all ages, and which are not directed primarily at children.

The Panel further noted that the child would need to have a device with internet access to use the QR code, and even if they did so would be required to log-in to the age-gated service to use the app.

Overall, The Panel considered that 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 the complainant had viewed the advertisement while streaming the show "Prisoner" which was created in the 70s and 80s and which has an 'M' rating.

The Panel noted the advertiser's response which states the methods they employ to ensure this advertisement does not appear in children's programming.

The Panel considered that the audience for the advertisement was unlikely to include more than 25% children.

Targeting children conclusion

The Panel considered that the product would not have significant appeal to children, the content of the advertisement was not principally appealing to children, and audiences for the advertisement would not include a significant proportion of children. The Panel therefore determined that the advertisement did not target children and the provisions of the Children's Code did not apply.

Wagering Code

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.

Wagering Code Section 2.1 - Advertising or Marketing Communication for a Wagering Product or Service must not, having regard to the theme, visuals and language used, be directed primarily to Minors

The Panel noted that the Practice Note for the Wagering Code states:

“Whether an advertisement or marketing communication is “directed primarily to minors” is an objective test based on a range of factors. It is a combination of visual techniques and age of characters and actors which will mean the marketing communication is directed primarily to minors. The use of any one factor or technique in the absence of others may not necessarily render the marketing communication “directed primarily to minors”...

“An advertisement or marketing communication featuring cartoons or licensed characters, such as super heroes and celebrities, that particularly appeal to minors may breach the Code. Licensed operators should take great care when using cartoon-like images. They may be acceptable if they are adult in nature but licensed operators run the risk of breaching the Code if the cartoon images are appealing to minors.”

The Community Panel noted that minors were defined in the Wagering Code as those under 18.

Consistent with the reasoning under the Children’s Code, the Panel considered that the advertisement was not directed primarily to minors.

Wagering Code Section 2.1 conclusion

The Panel found that the advertisement was not directed primarily to minors and did not breach Section 2.1 of the Wagering Code.

Conclusion

Finding that the advertisement did not breach any other section of the Children’s Code, or the Wagering Code the Panel dismissed the complaint.