

Case Report

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
7. IR Recommendation:	Panel to Reconsider
8. Date of reviewed decision:	3-Jul-2024
9. Decision on review:	Dismissed

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)

Competitive gambling advertised during children's cartoons. 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 ORIGINAL ADVERTISER’S RESPONSE

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

Please see below response to the 2x complaints in relation to AANA Wagering Code\2.1. 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 ORIGINAL 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 ORIGINAL 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.

REQUEST FOR INDEPENDENT REVIEW

We appreciate the opportunity to address and understand your concerns regarding our product and its advertisements.

During the response period provided by Ad Standards, we engaged with leading industry experts to gain further insights and perspectives. This engagement allowed us to better comprehend the panel's concerns and directly address the issues raised.

We had extensive conversation with both ClearAds Australia who provided classification that was relied upon along with Channel 9, the television broadcasting, publishing, and digital media agency that aired the advertisement.

Response to Findings Made

Beyond Game Day Squad acting in complete reliance of the ClearAds Classification it received and ensuring we adhered to all obligations to comply with all relevant laws, rules, and regulations.

We have come to realise there is a fundamental misunderstanding about our product, leading to the mistaken belief that it may negatively affect or influence children as it has been incorrectly classified as betting. We welcome this chance to clarify what our product truly is and how it works, aiming to alleviate any concerns the panel members may have.

While considering our response to the panel, we have carefully reviewed and incorporated all comments and feedback provided, both directly and through discussions with our supporting partners and the information provided by the panel to ClearAds Australia, who assured us that they would defend their classification determination.

We understand and appreciate the panel's concerns regarding advertising during children's television programs. It is crucial to protect children from exposure to inappropriate or harmful content. As a vulnerable audience, children require special care to ensure that the advertising they encounter is ageappropriate and does Not promote products or services detrimental to their well-being.

At the same time, we must balance this concern with the rights of businesses to advertise their legal and legitimate products, particularly those classified as suitable for general audiences.

Regarding our advertisement for the Game Day Squad fantasy sporting platform, we ensured all proper steps were taken before airing. We sought classification for this

advertisement to guide both us and Channel 9, the broadcaster. The advertisement received a G rating for Australian TV.

While we understand the panel's concerns, we would like to emphasize the following points regarding the slot aired during a children's television program:

Nature and Legal Classification of the Product:

Game Day Squad (GDS) as a Legal and Legitimate Product:

1. **Legality and Classification:** Game Day Squad is a fantasy sports platform legally recognized in Australia as a game of skill, vastly distinct from gambling as the panel continues to suggest. This distinction is crucial as it negates the need for a gambling license under very strict associated Australian laws. The product's legality has further been affirmed through comprehensive preclearance processes, including approval by Clear Ads Australia, which classified our advertisement as suitable for general audiences (G rating). We ask that the Panel please stop overlooking the legitimate legal classification of our product and making comments to the contrary.
2. **Skill-Based Nature:** Our platform involves participants using their knowledge of sports, analytical skills, and strategic thinking to assemble and manage competitive fantasy teams. This complexity and strategic depth appeal primarily to adults and does not typically attract the interest of children, who prefer simple, entertaining games.
3. **Compliance with Regulations:** Our advertisement adhered to the Commercial Television Industry Code of Practice, which includes content standards reflecting community expectations. The 'G' rating received from Clear Ads Australia allows for broadcast at any time, underlining its appropriateness for all audiences. The fact that the product has been classified with a G rating by the relevant authorities suggests that it has been deemed appropriate for general audiences, including children. The classification system is designed to provide guidance on the suitability of content for different age groups, and a G rating is the most permissive rating, indicating that the content is suitable for viewers of all ages. This was clearly relied on by the advertiser as well as the broadcaster, Channel 9, who used the classification to book massive bonus delivery of programming which significantly increased our programming slots including the one that ultimately landed during this television program.

Differentiation Between Fantasy Sports and Children's Collectible Card Games:

During the past couple of weeks, as part of the extensive conversation had with industry experts and representatives involved in this matter, it was brought to our attention that members of the panel likened the player card element of our product to that of Pokémon Go suggesting that is where the appeal for children would come from.

Having taken such comments by the panel into account, we have come to realise there is a fundamental misunderstanding about our product, leading to the mistaken belief that it may negatively affect or influence children as it has been likened to sports betting. We welcome this chance to clarify what our product truly is and how it works, aiming to alleviate any concerns the panel members may have.

Fantasy Sports Player Cards:

1. **Purpose and Intent:** Player cards in fantasy sports represent real-life professional athletes and are used for team selection and scoring based on actual sports performance. This strategic use of real-world data is far removed from the fictional and imaginative nature of children's collectible card games like Pokémon.
2. **Content and Imagery:** Fantasy sports cards feature statistics and data-driven content related to real athletes, whereas children's cards often depict cartoon characters and are designed for imaginative play.
3. **Target Audience:** The strategic and analytical nature of fantasy sports primarily appeals to adults who are sports enthusiasts, whereas children's collectible card games are explicitly marketed towards younger audiences for entertainment and collection.

Advertising Content and Target Audience:

Design and Intent of the Advertisement:

1. **Adult-Oriented Messaging:** The advertisement for GDS was crafted to appeal to an adult audience, focusing on strategic and analytical aspects of fantasy sports. It intentionally avoided elements that could appeal to children, such as bright colors, animations, or playful themes. The advertisement featured realistic graphics, a professional tone, and a focus on the strategic nature of the platform.
2. **Panel's Acknowledgment:** The Panel noted that the advertisement's imagery was not principally appealing to children, with no complex animations, bright colors, or background music. The overall content was described as dull and dark, reinforcing the fact that it was not designed to attract a young audience.

Advertising Slot and Context:

1. **Appropriate Scheduling:** The advertisement aired during a PG-rated program on a Sunday morning. While children might be part of the audience, the program was not exclusively for children and its classification indicated a requirement for parental guidance. The slot was chosen by the broadcaster based on its own techniques to which we the advertiser played no part. The Panel has wrongfully claimed that we had the opportunity to opt out of

placement during that time. 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. According to information provided by Channel 9 the panel is mistaken and this program was in fact not primarily viewed by children as claimed.

2. **Mixed-Age Programming:** Television programs often attract a mixed-age audience. The presence of children in the audience does not imply the program is directed specifically at them. Our advertisement was strategically placed by Channel 9 in a range of time slots to reach a broad audience, with the intention of primarily adults. However, they relied heavily on the classification of 'G' received by ClearAds which indicated that it was suitable for viewing by all general audiences and at any time.
3. **Official statement from broadcaster Channel 9 legal department:** "Nine takes its obligations to comply with all relevant laws, rules and regulations seriously, and advertising is placed in accordance with those requirements. Nine also relies on the classification provided by ClearAds, which I am instructed in this instance was given a "G" and could therefore be placed at any time of the day and in any program."

Parental and Guardian Responsibility:

1. **Family Viewing Context:** While children may be present during PG program viewing times, it is ultimately the responsibility of parents and guardians to monitor and supervise their children's television consumption, including exposure to advertisements.
2. **Educational Value:** Engaging with fantasy sports can promote critical thinking, research skills, and strategic decision-making. These cognitive benefits highlight the product's potential positive impact when facilitated responsibly.

Addressing the Complaint:

1. **Misunderstanding of Product Nature:** The complaint suggested that our platform is a gambling product disguised as a fantasy sports game. However, fantasy sports are legally recognized as skill-based games in Australia, very clearly distinct from gambling.
2. **In-Game Purchases and Cash Withdrawals:** The advertisement did not emphasize in-game purchases or conditions for cash withdrawal because these elements are secondary to the primary focus on strategic gameplay based on real-world sports performance.

The Ad Standards decision is largely based on the incorrect conclusion that was reached:

"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.”

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.”

As can be seen in the statements above, the advertisement aired is not the subject of dispute. What is under attack is the product itself. In its report the Ad Standards further concedes that the provisions of the Wagering Code do not apply. The reason for this as stated multiple times previously is because Game Day Squad is a fantasy sports platform legally recognized in Australia as a game of skill, vastly distinct from gambling as the panel continues to suggest. This distinction is crucial as it negates the need for a gambling license under strict regulatory Australian law. Game Day Squad has undergone extensive compliance checks in all States and Territories, as well as federal levels to ensure compliance.

Our platform is unequivocally NOT GAMBLING or WAGERING. It involves participants using their knowledge of sports, analytical skills, and strategic thinking to assemble and manage competitive fantasy teams. This complexity and strategic depth appeal primarily to adults and does not typically attract the interest of children, who prefer simple, entertaining games.

Furthermore, the point that the panel simply assumed without having the exact audience data was also found to be incorrect. This program was not viewed primarily by children as claimed.

Comprehensive Explanation of the Skill and Work in Fantasy Sports:

Fantasy sports are complex games that require a significant amount of skill, knowledge, and strategic thinking. Unlike gambling or wagering, where outcomes are largely based on chance, success in fantasy sports is determined by the participant's ability to analyze data, make informed decisions, and effectively manage a team throughout a season. Here's a detailed explanation of the skills and work involved in fantasy sports, highlighting why it is considered a game of skill and how the player card element plays a role:

Key Skills and Strategies in Fantasy AFL and NRL:

1. Player Selection Strategy:

- Success in fantasy sports relies heavily on a user's knowledge, research, and strategic selection of players based on their skills, form, and matchups. Participants must analyze player statistics, team compositions, injuries, and other factors to make informed decisions. For example, identifying underpriced "cash cow" players who can

rise rapidly in value with good early scores, picking a mix of proven premium players and potential breakout rookies, and selecting players with dual position flexibility (DPP) to cover multiple positions.

2. Scoring Based on Real-World Performance:

- Fantasy sports award points based on actual player performances and skills demonstrated on the field, not random chance. Specific metrics used to calculate include goals, disposals, and tackles for AFL, and tries, line breaks, and tackles for NRL. This direct link between real-world on-field skills and fantasy scoring reinforces the skill-based nature of the games.

3. User Skill and Strategy Determines Outcomes:

- Success in fantasy sports is determined by user skill in areas like player evaluation, team construction, trading/waivers, and in-game strategy. Skilled users consistently outperform others through superior decision-making and strategy. For example, strategically trading out cash cows at peak value to upgrade other positions, being proactive in trading out underperforming players, and planning for bye rounds to ensure enough players each week.

4. Established as Games of Skill:

- Fantasy sports are widely recognized and legally classified as games of skill rather than games of chance under Australian laws and regulations. This legal distinction separates them from prohibited forms of online gambling and is a key reason why fantasy sports platforms can legally operate.

5. Skill-Building Resources:

- Fantasy sports platforms provide a wealth of expert analysis, statistical tools, and educational resources to help users develop and apply their skills. These resources include user guides, expert podcasts, and statistical breakdowns that reinforce the skill-based approach.

Difference Between Fantasy Sports Trading and Children's Collectible Card Games:

1. Purpose:

- Fantasy AFL/NRL player cards represent real-life professional athletes and are used for team selection and scoring in skill-based fantasy sports competitions. In contrast, Pokémon cards depict fictional characters and are designed for a collectible trading card game focused on gameplay and collecting.

2. Trading Mechanics:

- In fantasy sports, player prices fluctuate based on their real-world performances. Users can strategically "trade" players in and out of their fantasy team to maximize their overall team value, driven by maximizing fantasy points scored. Pokémon trading focuses on obtaining rare/powerful cards or completing sets, with card values based on rarity, condition, and demand.

3. Monetization:

- Fantasy sports trades are part of the strategic team management to score points and succeed in contests. Pokémon card trading is driven by the collection/gameplay aspect and sales of booster packs to obtain rarer cards.

Conclusion:

Our fantasy sports platform is legally compliant, fundamentally a game of skill and strategy appealing to adults. The advertisement was carefully designed and placed to target an adult audience, with no elements that would attract children despite not being illegal or unsuitable. We respectfully request that the Panel consider the evidence provided and acknowledge our commitment to responsible and ethical advertising practices. By understanding the true nature of our product and its target audience, we hope to alleviate concerns and continue promoting a safe, strategic, and enjoyable experience for our users.

In summary:

1. Game Day Squad (GDS) is a fantasy sports platform, legally recognized as a game of skill distinct from traditional gambling in Australia. As such, it does not require a gambling license to advertise.
2. The advertisement underwent a comprehensive pre-clearance process through ClearAds Australia, receiving a 'G' classification suitable for general viewing, affirming compliance with the Commercial Television Industry Code of Practice.
3. Channel 9, which broadcasted the advertisement, confirmed its 'G' rating and appropriateness for general audiences, further validating adherence to advertising standards.
4. Fantasy sports competitions rely on participants' knowledge and strategic ability to assemble teams based on real-life sports statistics, distinguishing them from betting on uncertain outcomes.
5. The Australian legal framework, including the AANA Wagering Advertising Code, supports the distinction between fantasy sports as games of skill and traditional gambling, exempting GDS from regulations targeting wagering advertising.
6. GDS acted swiftly to discontinue the advertisement upon receiving concerns from Ad Standards, demonstrating their commitment to responsible advertising practices.
7. The report's language should be revised to accurately reflect the nature of GDS's offerings as skill-based fantasy sports competitions, distinct from gambling involving betting on outcomes or purchasing additional cards as a central aspect.

In summary, the advertiser contends that GDS operates within legal boundaries as a skill-based platform, underwent rigorous compliance measures, and promptly addressed concerns raised, warranting dismissal of the complaint or a review to accurately represent their operations.

Details of new evidence

We recognize that the community panel was operating under certain assumptions and acknowledge their admission of not having sought critical data from the broadcaster to support one of the three essential requirements. We have since obtained this data and are pleased to report that we have the full support of Channel 9, their legal team, and ClearAds Australia. This support underscores our compliance and the legitimacy of our operations under the relevant regulations.

Details of flaw in decision

In addition to the significant oversight previously mentioned, the Community Panel has erroneously classified us as a betting platform—a characterization we unequivocally refute. We assert our legal rights to operate our product and platform in accordance with all applicable State, Territory, and Federal laws in Australia. It has been well-established through rigorous testing that fantasy sports constitute a game of skill, not merely chance, as inaccurately referenced in the panel's report.

Details of flaw in process

We are currently facing financial penalties as a result of seeking a review in our capacity as advertisers, despite having adhered to all legal obligations. We have relied on the guidance of the Classification and the legal team at Channel 9, both of whom have affirmed our compliance with legal standards. Unfortunately, the panel did not adequately consult accurate data nor did they sufficiently familiarize themselves with the nature of our product prior to making their assertions. Their stance appears to disregard the opinions of State, Territory, and Federal licensing regulatory bodies, all of which have legally recognized our product as compliant and distinct from gambling, betting, or wagering activities.

INDEPENDENT REVIEWER'S RECOMMENDATION

Independent Review Decision

I recommend that the Community Panel review its determination in this matter, on the basis of new and relevant evidence, a substantial flaw in the Panel's reasoning, and a procedural flaw in the Panel's process of determination.

Community Panel finding

Ad Standards received two complaints about an advertisement described as a 'Fantasy Sports promotion' linked to football competition. The advertisement was displayed on morning free-to-air television during children's television programming. Both complaints alleged the advertisement promoted competitive gambling, including in-game purchases and cash rewards. The advertisement used the slogan '*Turn GameDay into Pay Day*'.

The Ad Standards Community Panel considered whether the advertisement breached two codes:

- *AANA Wagering Advertising and Marketing Communication Code*: The Panel found that the Code did not apply to the advertiser as it was not '*a person or company licensed in a State or Territory of Australia to provide Wagering Products or Services to customers in Australia*'. However, the Panel suggested that the advertisement did come within the definition of '*Wagering Products and Services*' in the Code, which included '*betting on fantasy sports teams*'.

- *AANA Children’s Code*: The Panel found that the advertisement was in breach of section 2.1 of the Code, which provides: *‘Advertising to Children must not contravene Prevailing Community Standards’*. As to the two elements of that section, the Panel decided as follows:
 - *‘Advertising to Children’*: The Code requires consideration of three factors: the nature and intended purpose of a product, the presentation of the advertisement content and the expected average audience at the time or place the advertisement appears. The Panel found that, overall, the advertisement was targeting children: *‘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’*.
 - *‘Prevailing Community Standards’*: The Panel found that this advertisement was against prevailing community standards. It was *‘a fantasy sports product in which people bet on the outcome and which involves a premium (buying extra cards) [and] is unsuitable for children’*.

Advertiser’s response

The Advertiser disagreed with the Panel’s decision in four submissions – the initial response to the complaint; a response to the Panel decision; the request for review of the Panel decision; and a supplementary submission. Those submissions made the following points:

- The Advertiser had submitted the advertisement for pre-clearance under the comprehensive process administered by ClearAds Australia. It gave the advertisement a ‘G’ classification, which affirms its suitability for general viewing by all ages at any time, under the Commercial Television Industry Code of Practice. The classification also confirms the advertisement does not fall within the prohibitions applying to betting or gambling.
- The ‘G’ classification was accepted by the broadcaster (including their legal team). The broadcasting slots were chosen by the broadcaster. The advertisement in fact aired during a PG-rated program, which indicates a requirement for parental guidance. The broadcaster has subsequently advised the Advertiser that the program was not in fact primarily viewed by children, as the Panel thought.
- The Advertiser is not required under relevant Australian laws to register as a betting platform or as a provider of wagering and gambling services.
- Fantasy sports competitions are recognised in Australia as games of skill, not chance. Participants assemble teams and predict sports performance based on

real-life sports data and professional athletes. There is no wagering on uncertain outcomes or on chance.

- Fantasy sports player cards are different to those used in some other children’s collectible card games, such as Pokemon Go. Those other card games often depict cartoon characters and are designed for imaginative play.
- Fantasy sports competition appeals primarily to adults, because of the complexity of the games and the analytical skills and strategic thinking required. The medium does not typically attract the interest of children, who prefer simple, entertaining games. Accordingly as the Panel agreed), the advertisement did not use bright colours, animations or playful themes, but was crafted to appeal to an adult audience.
- The advertisement did not emphasise in-game purchases or conditions for cash withdrawals; those elements were secondary to the primary focus of the game on strategic gameplay based on real-world sports performance.
- The Advertiser is committed to responsible advertising practices – as demonstrated by the preceding considerations. In addition, the Advertiser immediately discontinued the advertisement while this review process was underway.

Analysis of the issues in dispute

The Panel’s decision that the advertisement was against prevailing community standards was based on two findings –

- the advertisement targeted children, as a significant proportion of the likely viewing audience, and
- the advertisement was unsuitable for children, as it promoted a product that involved betting on an outcome and buying extra cards.

The Panel finding that the advertisement was unsuitable for children was undoubtedly influenced by its view that the fantasy sports game was a form of gambling – *‘betting on an outcome’*. Although the Panel accepted that the Wagering Code did not apply in this instance, the Panel reached a similar outcome by classifying the advertisement as a form of gambling that was in breach of prevailing community standards when targeted at children.

The focus of this review is not squarely on the correctness of those Panel findings. Rather, the role of the Independent Reviewer is limited to recommending that a Panel review should review its earlier determination, on one of three grounds: new and relevant evidence, a substantial flaw in the Panel’s decision or reasoning, or a flaw in the Panel’s process of determination.

I find that those grounds are made out in this case – for much the same reason in each case.

Both complaints had alleged that the advertisement was promoting a competitive gambling platform. It appears the Advertiser construed this as an allegation that it was in breach of the Wagering Code. Accordingly, the advertiser's initial response to the complaint briefly contended that the advertisement was not promoting a gambling product and that the Advertiser was not required to obtain a gambling licence under Australian law.

In response to the Panel finding that the advertisement was targeted at children and was against prevailing community standards, the Advertiser has made several new claims that address that particular finding. It is appropriate that the Advertiser's fresh claims be considered by the Panel. I will add a few observations as to how the Panel may go about that task:

- The Panel is not obligated to endorse the view of ClearAds Australia and the broadcaster that this advertisement was suitable for general viewing at any time of the day. However, the 'G' classification was applied following an established and respected assessment process. Accordingly, the classification should be given some weight in the Panel's reconsideration.
- The Advertiser claims (on advice from the broadcaster) that the advertisement was shown during a PG-rated program, and that it was not primarily viewed by children. By contrast, the Panel noted that it did not have exact audience data from the Advertiser, but found that the expected average audience of the advertisement was likely to include a significant proportion of children. The Panel principally relied on the program timeslot for that finding. It is a question for the Panel whether it requires the Advertiser to provide information to substantiate its claim. The difficulty facing the Panel is that its existing finding is, essentially, inference or surmise, and is not firmly-grounded now that it has been disputed by the Advertiser.
- The Panel has likewise assumed that the fantasy game involved betting on an outcome, akin to gambling. This, too, has been disputed by the Advertiser who claims that fantasy sports games are games of skill, not chance, and do not involve wagering on chance or uncertain outcomes. It is hard to gauge solely from the advertisement whether there is any element of gambling in this fantasy game, or whether it is purely a game of skill as contended by the Advertiser. Again, however, the Panel's existing finding does not appear to be firmly-grounded in the absence of further inquiry. To the extent that it may be relevant, I note that the 'How to Play' section of the GamePlay website does appear to provide a description that is consistent with the Advertiser's claims. For example, it refers to 'game cards', 'competitions' and winning prizes by '*finishing weekly in the top 20 of either the Classic or Champagne league*'.
- It appears that GamePlay is a commercial product that provides incentives for participants to make in-game purchases that will heighten their chance of winning a game reward or other prize. However, it is questionable whether that alone

makes it a form of gambling or wagering. There are perhaps many other non-gambling products advertised on television that offer people an opportunity to engage in a competitive activity that is rewarded with prizes. This, too, is a distinction that warrants reconsideration by the Panel.

Conclusion

For those reasons, my view is that:

- The Advertiser has outlined important and relevant claims (or evidence) that was not previously before the Panel; this information could lead the Panel to change its view; and there is an understandable reason why this information was not earlier provided by the Advertiser.
- The weight the Panel attached to some of the information before it (such as the advertisement timeslot, and the nature of the game being advertised) is open to question, and should be reconsidered in the light of the Advertiser's competing claims.
- There is an element of surmise or assumption in the Panel's findings, in the absence of any further inquiry being made by the Panel into the nature of the product being advertised and the time of the advertisement. The Panel may, as a procedural matter, choose to seek further information.

I recommend, accordingly, that the Panel reconsider its determination.

THE DECISION ON REVIEW

The Ad Standards Community Panel (Panel) considered whether this advertisement breaches the AANA Children's Advertising Code (the Children's Code).

The Panel noted the Independent Reviewer's recommendation that the Panel reconsider the case taking into account the new evidence provided by the advertiser relating to audience figures and to give further consideration to the nature of the product being advertised.

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:

- 2. Nature and intended purpose of the product being promoted is principally or significantly appealing to Children;*
- 3. Presentation of the advertisement content (e.g. theme, images, colours, wording, music and language used) is principally appealing to Children;*

4. *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 noted the further information provided by the advertiser that the game being promoted is a complex game of skill which involves statistics and data-driven content related to real athletes.

The Panel considered that this kind of competition may appeal to some children who are sports enthusiasts, however, accepted the advertiser’s submission that their product primarily appeals to adults.

On review, the Panel considered that the product would have some appeal to children, but that it was not principally or significantly appealing to children.

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

Consistent with the initial decision, 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 one complainant viewed this advertisement during the children's program *Bakugan: Evolutions* on a Sunday morning on channel Nine Go. The Panel noted the advertiser's further submission that this program was rated PG and the audience was not primarily children.

The Panel accepted the advertiser's submission that *Bakugan: Evolutions* is a PG rated show that did not have an audience of primarily children. However, the Panel noted that the advertiser had not provided exact audience data and the test for this point is a significant proportion of children (over 25%), not primarily children.

The Panel noted that the show *Bakugan: Evolutions* was rated PG and featured animated characters using cards and monsters to battle each other. The Panel considered that the content of this show would have significant appeal to children.

The Panel also noted that the advertisement had received a second complaint relating to the advertisement repeatedly playing in the morning timeslot on the same channel. The Panel noted that other shows in the morning timeslot included *Care Bears*, *Spidey and his Amazing Friends*, *Lego Friends: The Next Chapter*, and *Transformers: Bumblebee*. The Panel considered that given the nature of the overall programming in morning slots on Channel Nine Go, that programming was likely to have significant appeal to children, and in the absence of actual or predicted audience data, it was reasonable to conclude that the audience at that time of day would include a significant proportion of children.

Targeting children conclusion

The Panel considered that the content of the advertisement would not be principally appealing to children, and the advertised product would not have significant appeal to children. The Panel noted that exact audience data was not provided, and the advertisement may, in some time slots, have included a significant proportion of children. Overall, the Panel considered the advertisement was not targeting children.

Conclusion

On review, the Panel found that the advertisement did not target children and therefore that the provisions of the Children's Code did not apply. The Panel dismissed the complaints.