

WON'T SOMEBODY PLEASE THINK OF THE CHILDREN...? YOU BET – WHAT YOU NEED TO KNOW ABOUT THE AANA'S NEW BETTING ADVERTISING CODE

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We've all seen the growth in gambling/betting advertising in the last few years, especially those of us who like to watch live sport. There seems to be a new wagering/betting provider popping up every month, and as such the market keeps getting more and more saturated with punting ads. But, aren't they illegal, like tobacco ads? And why are they on during kid-friendly timeslots like during the footy? Some of the issues people have around gambling and wagering ads are covered by the AANA's new [Wagering Advertising & Marketing Communication Code](#), coming into force on 1 July 2016. But the big question is - will it change anything?

First up, what were the rules and codes applicable to gambling/betting/wagering advertising before the new Code, and what is changing?

At the outset, gambling, punting and wagering advertising is not illegal like tobacco advertising. But the legal framework is actually much more complicated than you may think, because gambling and wagering legislation (including the legislation surrounding the advertising of gambling and wagering services) is primarily State/Territory based, and then the federal *Interactive Gambling Act* and *Competition and Consumer Act* (incorporating the *Australian Consumer Law*) ("CCA") also applies over the top. While most of the State/Territory based legislation contains similar advertising rules, there are a lot of individual differences, so all gambling services ads really need to be assessed on a State/Territory level.

For instance, as an FYI, here are some of the specific rules that apply to gambling advertising under the State/Territory legislation:

- Must not portray anyone under 25 gambling (ACT & TAS);
- Must be advertised with decency, dignity and good taste (NSW & SA);
- Must not advertise winnings other than on own website (NT);
- Must not urge non-gamblers to use a gambling service (NT);
- Must not include 'win' or '\$' (or anything analogous) except in relation to a particular prize (SA);
- Must contain prescribed gambling warning messages (all jurisdictions).

But what about media placement? Gambling ads seem ubiquitous at the minute and at times, can seem pervasive, which can lead a lot of folks to ask the question – why are they allowed to show gambling ads to kids? Well, the simple answer is, they can't, and the new Code helps with that. There are no rules or limits on how much gambling/betting advertising media outlets are allowed to show, so it is simply a case of user pays/supply and demand in terms of media placement. However there are some exceptions to when gambling ads can be shown, like during ads for live sport. In addition to the abovementioned State/Territory legislation and the CCA, free-to-air TV has its own broadcast rules that dictate that gambling ads can be shown during ads for live sport, but cannot be advertised during the sport itself.

All of the above are entrenched in relevant legislation and broadcast rules that are not within the AANA's sphere to regulate. So, what does the Code achieve, and what does it change? Broadly, since it applies to all advertising in all States and Territories, regardless of media, it brings a norm of advertising conduct into place that arguably didn't exist before, when it comes to specific gambling and wagering advertising. In terms of specifics, we discuss this more below.

What exactly does the AANA's new Wagering Advertising & Marketing Communication Code contain?

Firstly, it doesn't look like we are going to see less gambling advertising on our screens any time soon, not as a result of the new Code, because the AANA's role isn't to regulate media buys or to encroach into the area of FreeTV's CAD division when it comes to rating ads. It contains no new rules or sections that mandate gambling advertising be restricted to night time or adult time slots for instance, and if it did it would likely lose the support of the TV networks – support which is obviously vital for enforcement and to uphold the self-regulatory framework.

The Code applies to advertisements for services that offer betting on horse races, harness races, greyhound races, sporting events, novelty events or other contingencies (or a series of races, events or contingencies). It also includes betting on fantasy sport teams, odds compilation and tipping services but does not include gaming, such as casino games or electronic gaming machines, keno, lotto and lottery products or trade promotions.

As you will see from the below, many of the provisions in the Code reflect the State/Territory based legislation discussed above, and are focused on preventing the "hooking in" of minors and young people, and implying social pressure to "have a punt". Under the Code, advertisements for betting/wagering services must comply with the following:

- Must not, having regard to the theme, visuals and language used, be directed primarily to minors;
- Must not depict minors except where shown in an incidental role in a natural situation and where there is no implication they will engage in wagering activities;
- Must not depict a person aged 18-24 years old engaged in wagering activities;
- Must not depict a person placing a wager in combination with the consumption of alcohol;
- Must not state or imply a promise of winning;
- Must not portray, condone or encourage participation in wagering activities as a means of relieving a person's financial or personal difficulties;
- Must not state or imply a link between wagering and sexual success or enhanced attractiveness;
- Must not portray, condone or encourage excessive participation in wagering activities; and
- Must neither portray, condone or encourage peer pressure to gamble nor disparage abstention from wagering activities.

Like the other applicable AANA codes, the other factor in play here is that consumers and any other person will be able to complain to the Advertising Standards Board advertisements, and the ads will be assessed under this Code. So we will likely see an influx of new complaints and all wagering and betting service providers should bear this in mind in pre-production and also after broadcast/publication, as after July 1 it is a reality that this is simply a new cost of business.

Contact us

If you would like further information on the complex world of betting and gambling advertising, the new Code, or advertising codes generally and how they impact on you or your client's business, please contact one of our experts below.

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