

Our ref: BJC.169403-10  
Ask for: [REDACTED]  
Your ref:

Advertising Standards Authority Limited  
Mid City Place  
71 High Holborn  
London  
WC1V 6QT

INTELLECTUAL PROPERTY DEPT  
DIRECT TEL : [REDACTED]  
DIRECT FAX : [REDACTED]  
e-mail [REDACTED]

22 December 2017

Dear Sirs

**Complaint about Bet365.com betting advert in The Racing Post in Northern Ireland**

We have been instructed on behalf of [REDACTED] to write to you in order to complain about the enclosed advert for Bet365.com. [REDACTED] would ordinarily write himself, but this letter refers to legal issues relating to gambling on which we have advised [REDACTED] and which we can better express. The length of this letter also results from the need to set out the legal issues clearly.

[REDACTED] wishes to complain that this advert breaches paragraphs 1.10 ("Marketing communications should comply with the law and should not incite anyone to break it") and 1.10.1 ("Marketers must not state or imply that a product can legally be sold if it cannot") of the CAP Code.

Background

Whilst we are making this complaint on behalf of [REDACTED] in his own name, we should disclose that [REDACTED] is involved in the Campaign for Fairer Gambling, which is a private pressure group committed to securing government and industry support for measures which will actively and effectively reduce the harm caused to individuals and the public by the activities of the gambling industry. He is therefore concerned to see that gambling advertising complies with relevant laws and industry codes.

You may therefore consider that this complaint falls under the category of "making a complaint on behalf of an organisation or body with a direct interest in the subject of [your] complaint" and so we acknowledge that [REDACTED] name (and our own details if necessary) may be disclosed to the advertiser.

For the avoidance of doubt, none of the points at issue is the subject of simultaneous legal action.

The advertising

The enclosed advert is taken from The Racing Post, a publication which is distributed extensively throughout Northern Ireland. This particular copy of the publication was obtained in Northern Ireland on 12 December 2017.

It can be seen that this advert is particularly addressed to the Northern Ireland public as there is a telephone number specific to Northern Ireland advertised in the top left corner as a means of placing bets. There are no references in the advert to any geographical restrictions and the service advertised is available to residents of Northern Ireland. This is in contrast to the terms commonly applicable to UK prize draws promoting consumer goods where there are usually specific provisions for residents of Northern Ireland in order to comply with the different gambling laws applicable there (either excluding Northern Ireland from the promotion or offering a “no purchase necessary” route of entry to avoid being an illegal lottery).

The advert does not identify the advertiser by reference to its corporate identity or where it is based, and gives the impression that the advertiser is Irish.

There are many similar adverts in both broadcast and non-broadcast media by both this advertiser and its competitors. For the purposes of this complaint we refer just to this advert, but an ASA ruling would be relevant to others. In particular, if this complaint were to be upheld then we consider that the ruling would be of assistance to Clearcast in respect of broadcast advertising.

#### Contacting the advertiser directly

██████ has not contacted the advertiser directly in relation to this advert. The issue complained of is widespread practice by many betting companies, and therefore we consider that a ruling from the ASA is in any event necessary in order to clarify the issue at hand and facilitate the application of the BCAP and CAP Codes across many adverts in various media.

It is also highly unlikely that any company running an advert of this sort would agree voluntarily to stop doing so merely at ██████ reasoned request. A ruling from the ASA would, however, then allow ██████ in future to contact advertisers directly with a much greater likelihood of his request having some effect.

#### The advertising does not comply with the law

As part of ██████ wider interest in fairer gambling, we have advised him in respect of relevant legal constraints, including in relation to Northern Ireland. As the BCAP and CAP Codes recognise, gambling is a devolved matter and Northern Ireland has its own law in relation to it. This is mainly set out in the Betting, Gaming, Lotteries and Amusements (Northern Ireland) Order 1985 (the “BGLAO”), which can be obtained online at [www.legislation.gov.uk/](http://www.legislation.gov.uk/). Whilst this legislation pre-dates the advent of remote gambling which is the subject of the advert being complained about, it nonetheless remains in force and contains provisions which can be applied in light of remote gambling.

Under article 6 of the BGLAO it is an offence “for any person to (a) carry on business or act as a bookmaker, or (b) hold himself out or represent himself to be a bookmaker, unless he holds a bookmaker’s licence authorising him to do so”.

A “bookmaker” is specifically defined and covers someone receiving or negotiating bets. A “bookmaker’s licence” is also specifically defined and so to meet the requirement of having one the licence must (a) be under the BGLAO (and therefore specifically relate to Northern Ireland rather than, for example, under the Gambling Act 2005 which applies to Great Britain) and (b) relate to a track or licensed premises. Also, under article 7(5) of the BGLAO certain people are prohibited from obtaining a bookmaker’s licence, effectively making them available only to Northern Ireland registered companies or Northern Ireland residents.

The advertiser does not appear to have or be eligible for a “bookmaker’s licence” as defined. Its website identifies it as a body corporate called “Hillside (UK Sports) LP, a Limited

Partnership incorporated in Gibraltar (Registration number 117)”, whereas article 7(5)(d) of the BGLAO disqualifies from obtaining a bookmaker’s licence “a body corporate other than a company registered under the Companies Act 2006 in Northern Ireland”. The advertiser’s website references it being licensed by the British Gambling Commission (in respect of the rest of the UK), but this is not under the BGLAO as required and there is no mention of any licence for Northern Ireland.

Further, the licence would relate to the advertiser’s licensed premises, whereas [REDACTED] understands that the advertiser has no premises in Northern Ireland (or indeed anywhere, as it is an online operator).

In the absence of a bookmaker’s licence for Northern Ireland, the advertiser’s activity is in breach of the BGLAO in 3 ways:

1. by reason of advertising in Northern Ireland the advertiser is holding itself out as a bookmaker, which is contrary to the prohibition in article 6(b) of the BGLAO;
2. placing the advert designed to attract customers in Northern Ireland (in particular with a specific Northern Ireland phone number) constitutes carrying on business in Northern Ireland, which is contrary to the prohibition in article 6(a) of the BGLAO; and
3. if the advert is successful then Northern Ireland customers physically present in Northern Ireland will place bets via a telephone number specific to Northern Ireland, as well as online. The advertiser is receiving the bets and providing the customer with the means to place them, each of which constitutes acting as a bookmaker contrary to the prohibition in article 6(a) of the BGLAO.

Therefore in the absence of a Northern Ireland bookmaker’s licence held by the advertiser, the advert does not comply, and the advertiser is not complying, with the applicable law.

In particular, as the advertising itself constitutes acts contrary to the BGLAO, the marketing communication does not comply with the law as required by paragraph 1.10 of the CAP Code. It also implies that the betting can legally be done, which is in breach of paragraph 1.10.1 of the CAP Code.

#### The advertising incites others to break the law

The BGLAO also contains offences which could be committed by the recipient of the advertising if they place bets.

Article 5 of the BGLAO states that “any person frequenting or loitering in a street or public place...for the purpose of bookmaking, betting, agreeing to bet, or paying, receiving or settling bets shall be guilty of an offence”.

Remote gambling on phones, tablets and other devices, as encouraged by the advert, could take place in a public place. These days, customers are as likely to make telephone calls away from the home as in it, and mobile devices mean that online activity is similarly just as likely in a public place as a private one. The advert contains specific reference to apps for Apple and Google devices through which bets can be placed, and the defining feature of devices supporting these apps is their being mobile and capable of use anywhere.

Whilst the advert does not specifically address where a bet could be placed, the means of placing it easily allow for it to be placed in a public place, and in stopping somewhere public to do so a customer would be breaching article 5 of the BGLAO. There is nothing in the advert’s small print advising customers about betting in public places.

Therefore, the advert also incites people to break the law, contrary to paragraph 1.10 of the CAP Code, and breaches paragraph 1.10.1 of the CAP Code by implying that the betting can be legally done when it cannot.

#### Gambling (Licensing and Advertising) Act 2014

██████ is aware that there is a relevant provision in the Gambling (Licensing and Advertising) Act 2014 (the "GLAA"), which is generally legislation relating to the regime set out in the Gambling Act 2005 governing gambling in Great Britain (but save for a couple of specific provisions does not affect Northern Ireland). The background to this is a little complicated and this provision is unlikely to be being breached, but we still feel we ought to mention it briefly. This legislation can also be obtained online at [www.legislation.gov.uk/](http://www.legislation.gov.uk/).

Under section 5 of the GLAA it is an offence to advertise unlicensed remote gambling in Northern Ireland. In this context, the licence referred to is one issued under the Gambling Act 2005 relating to Great Britain rather than the BGLAO licence referred to above. The advertiser will likely have a licence under the Gambling Act 2005 for Great Britain.

It is important to note that the GLAA and the BGLAO are separate issues; not committing an offence under the GLAA does not mean that an offence is not being committed under the BGLAO. The GLAA was implemented by a separate jurisdiction (as gambling in Northern Ireland is a devolved issue), and it does not repeal the BGLAO in any way. It does not expressly permit remote gambling to be advertised in Northern Ireland nor override Northern Ireland legislation, but merely contains what would be an additional offence under legislation passed in a separate jurisdiction if the advertiser did not also have a licence under the Gambling Act 2005.

#### Conclusion

The law in Northern Ireland pre-dates remote gambling, and if it were to be updated may then allow certain forms of remote gambling. However, it would also be likely to impose restrictions and requirements on it. To allow advertisers to ignore the law governing betting in Northern Ireland on the basis that it pre-dates the existence of the means of betting affords the advertisers the best of both worlds by being free of both current legal requirements but also any requirements which would no doubt accompany any future changes.

Irrespective of what the law might one day become, the BGLAO currently applies, can be interpreted in light of remote gambling, and is not being followed. In terms of advertising, the CAP Code's requirement for advertising to be legal ought to be upheld, and if advertisers are to place adverts for betting in Northern Ireland then they should find a way to do so within the confines of the law.

Should you require any further information in relation to this issue, please feel free to contact ██████ of this firm by email at ██████ or phone on ██████.

Yours faithfully

Lupton Fawcett

## The Advert




ROI: 1800946243

NI: 08000322365




LIVE ON BT SPORT 1

LIVE COMMENTARY ON ALL PREMIER LEAGUE MATCHES AT [bet365.com](http://bet365.com), KICK-OFF 20.00



9/1 HUDDERSFIELD

2/5 CHELSEA

15/4 DRAW

UP TO €100 IN BET CREDITS  
FOR NEW CUSTOMERS\*

IF ANY SOCCER MATCH FINISHES 0-0 WE WILL  
REFUND LOSING PRE-MATCH BETS  
ON ALL HALF-TIME/FULL-TIME, CORRECT SCORE  
AND SCORECAST MARKETS.†

BORE DRAW  
MONEY BACK OFFER

BET ON OVER 120 PRE-MATCH & 70 IN-PLAY MARKETS			
RESULT/BOTH TEAMS TO SCORE			
Huddersfield & Yes	14/1	Huddersfield & No	12/1
Chelsea & Yes	5/2	Chelsea & No	6/5
Draw & Yes	5/1	Draw & No	10/1

TOTAL GOALS	
Under 2.5	19/20
Over 2.5	17/20

HALF-TIME RESULT	
Huddersfield	6/1
Chelsea	20/21
Draw	13/10

BOTH TEAMS TO SCORE	
Yes	21/20
No	7/10

CORNERS	
Over 10	21/20
Under 10	Evs
Exactly 10	7/1

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Need Help? Call the National Helpline free on 0800 802 0133. View conditions of all our offers at [www.bet365.com](http://www.bet365.com). \*New customers only. Deposit €5 or more and claim within 30 days of registering to receive a 100% matched amount in Bet Credits up to €100. Bet Credits are released after settlement of qualifying bets (must settle within 30 days of claiming) and are non-withdrawable. Returns exclude Bet Credits stake. NETeller, Skrill and PayPal deposits don't count. Selections settled at odds of less than 1/5. Cash Out bets and bets placed via our Telephone Betting service don't count towards release of Bet Credits. Other conditions, time limits & exclusions apply. †Offer is available pre-match on every Soccer game for Half-Time/Full-Time, all Correct Score & all Scorecast markets. Refund will be given if the game finishes 0-0. Bets can be paid for from your Withdrawable Balance or Bet Credits. Any refunds will be returned to the applicable balance. In multiple bets the selection will be treated as a non-runner. Fully Cash Out bets are excluded. Where a stake has been partially Cash Out only the remaining active stake will be refunded. If a qualifying bet is edited using our Edit Bet feature prior to kick-off and the match finishes 0-0, only the stake a bet has been edited to include or amend a selection for an event that is In-Play, the offer will no longer apply. Other conditions apply. All prices subject to fluctuation.