

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

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]

19 January 2018

Dear Sirs

Complaint about 888 Casino gaming adverts on television in Northern Ireland

We have been instructed on behalf of [REDACTED] to write to you in order to complain about two related television adverts for 888 Casino, an online casino. [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 these adverts breach paragraphs 1.3 ("Advertisements must comply with the law"), 1.3.1 ("Advertisements must not state or imply that a product can legally be sold if it cannot") and 17.4.2 ("Advertisements for gambling must not condone or encourage criminal... behaviour") of the BCAP Code.

Background

We previously submitted a complaint on behalf of [REDACTED] on 22 December 2017 in relation to a Bet365 betting advert in the Racing Post in Northern Ireland. That complaint also concerned the legality of gambling in Northern Ireland, but in this case the medium of advertising and form of gambling are different so that this complaint is made under the BCAP Code rather than the CAP Code and it concerns the legislative provisions governing gaming rather than betting. Nonetheless, if you wish to deal with the two complaints together in any way then please do so. [REDACTED] does not currently anticipate making any further complaint to the ASA in respect of any other form of gambling in Northern Ireland.

As with the previous complaint, 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]"



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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

Two adverts for 888 Casino were viewed in Northern Ireland on the evening of Monday 15 January 2018.

The first advert, on ITV2 shortly after 10:00pm, promoted playing roulette on the 888 Casino website (the **"Roulette Advert"**). This advert can be found on YouTube by searching for 888 Casino Roulette TV Advert Recipe London or by going to https://youtu.be/GWqfNm_1TQM.

The second advert, on ITV4 at around 10:42pm, promoted playing slot machines on the 888 Casino website (the **"Slots Advert"**). This advert can be found on YouTube by searching for 888 Casino Slots TV Advert Recipe London or by going to <https://youtu.be/oqW5XvOpfik>.

Please note that there appear to be minor differences between the adverts broadcast and the corresponding versions on YouTube (an additional opening frame to identify the advertiser, an amended end frame identifying the advertiser and extra end frame relating to the promotion, and slight changes to the small print) but none relevant to this complaint. The small print on each of the adverts broadcast in Northern Ireland is as follows:

"New Players only. Freeplay awarded of £15 to £888 in selected games. No deposit needed. Winnings must be wagered 30 x before withdrawing."

"18+. UK only. T&Cs apply. www.begambleaware.org"

We enclose screenshots of these adverts (the **"Adverts"**) on YouTube to help you identify them, and pictures of the small print broadcast. We also enclose a picture from the broadcast advert identifying the advertiser.

The Adverts were broadcast in Northern Ireland and state "UK only" in the small print. The terms of the advertised website also state that "The Services are intended to be used by players who play or register in the UK". As the UK includes Northern Ireland (as opposed to the term "Great Britain") the advertised games are available to Northern Ireland residents.

This is in contrast, for example, 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).

There are many similar adverts by both this advertiser and its competitors. For the purposes of this complaint we refer just to these two adverts, but an ASA ruling would be relevant to others.

Contacting the advertiser directly

[REDACTED] has not contacted the advertiser directly in relation to the Adverts. The issue complained of is widespread practice by many websites of this nature, 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 [redacted] reasoned request. A ruling from the ASA would, however, then allow [redacted] in future to contact advertisers directly with a much greater likelihood of his request having some effect.

The law governing gambling in Northern Ireland

As part of [redacted] 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/. Whilst this legislation pre-dates the advent of remote gambling which is the subject of the Adverts, it nonetheless remains in force and contains provisions which can be applied in light of remote gambling.

The parts of this legislation relevant to the Adverts are those relating to gaming. "Gaming" is defined in article 2(2) of the BGLAO as "the playing of a game of chance for winnings in money or money's worth, whether any person playing the game is at risk of losing any money or money's worth or not". Both the Roulette Advert and the Slots Advert therefore advertise what the BGLAO considers to be gaming as players can win money (irrespective of whether they have to pay to play).

The Adverts do not comply with the law

Under article 130(1) of the BGLAO it is an offence to issue an advertisement "inviting the public to subscribe any money or money's worth to be used in gaming whether in Northern Ireland or elsewhere, or to apply for information about facilities for subscribing any money or money's worth to be so used."

There are exceptions set out in article 130(2), but none which is relevant to the Adverts.

Article 130(8) clarifies that "the public" means the public in Northern Ireland (which is the case in respect of the Adverts as they were broadcast in Northern Ireland), and that the advertisements covered by this article expressly include television advertisements.

In contrast to the requirement that the public be in Northern Ireland, the offence itself expressly relates to gaming "whether in Northern Ireland or elsewhere", so it is irrelevant where the actual gaming might take place. We note that chapter 17 of the BCAP Code on gambling similarly expressly relates to advertisements for gambling products "whether on-shore or off-shore".

The adverts are for an online casino, and roulette and slots games which are amongst the many forms of gaming there. The games require money to be subscribed in order to play and win (aside from, and following, any limited promotion allowing new users some amount of free play), and the purpose of the advertised casino is for the public to subscribe money to be used in gaming there. Therefore, all the elements of this offence are present and it is illegal to issue the Adverts.

Prohibition of certain gaming

Under article 55 of the BGLAO gaming is prohibited where one (or more) of three conditions is met. It seems that at least two of these are met in respect of the Adverts, leading to offences being committed by both the advertiser and the person taking part in the advertised gaming (as explained below).

Article 55(1)(a) contains the first condition, stating that no gaming shall take place where “the game involves playing or staking against a bank, whether the bank is held by one of the players or not”. In respect of the roulette and slots games advertised, the advertiser is the bank against whom players play/stake.

Article 55(1)(c) contains another condition, whereby gaming is prohibited if “the nature of the game is such that the chances in it lie between the player and some other person...and those chances are not as favourable to the player...as they are to that other person.” In respect of the Adverts, the chances lie between the player and the advertiser, and are more favourable to the advertiser. In roulette, there are 37 possible outcomes (numbers 0 to 36) but the returns to the player are calculated on the basis of 36 outcomes. Therefore, the game is designed so that over the long term the roulette operator will win more than the player. Similarly, we understand that slot machines are designed to generate an average pay-out which is less than 100% of the amount spent by players.

Offence of organising prohibited gaming

Article 59 of the BGLAO states that if any gaming takes place in contravention of article 55 (as referred to in the previous paragraphs), then “every person concerned in the organisation or management of the gaming shall be guilty of an offence”.

This offence is therefore being committed by the advertiser by organising the advertised gaming.

As a result, the Adverts both state or imply that the respective gaming product can legally be sold when it cannot, and in doing so condone and encourage criminal behaviour in the form of this offence, each of which is in contravention of the BCAP Code.

Offence of gaming in streets and public places

Under Article 58 of the BGLAO “Any person taking part in gaming to which this Chapter applies [*which includes gaming subject to article 55 as referred to above*] in a street or public place shall be guilty of an offence.”

The Adverts are for gaming on a website, which is accessible from mobile phones, tablets and other devices. These days mobile devices mean that online activity is just as easy and likely in a public place as a private one.

Whilst the Adverts do not specifically address where the person taking part in the gaming might be, there is nothing in the Adverts’ small print advising customers about gaming in streets or other public places in Northern Ireland where it could easily be done. Should a player do so it would be committing an offence, and therefore the Adverts condone criminal behaviour by others in contravention of the BCAP Code.

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/.

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 any licence under the BGLAO or otherwise covering

Northern Ireland. The advertiser appears to have a licence under the Gambling Act 2005 for Great Britain (but not Northern Ireland).

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 (in particular article 130, as referred to above). 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 gaming. However, it would also be likely to impose restrictions and requirements on it. To allow advertisers to ignore the law governing gaming in Northern Ireland on the basis that it pre-dates the existence of the means of gaming affords the advertisers the best of both worlds by being free of both current legal requirements but also any requirements and governance by regulatory bodies 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 BCAP Code's requirement for advertising to be legal ought to be upheld.

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


Yours faithfully

[redacted]
Lupton Fawcett LLP

The Adverts

The Roulette Advert

YouTube Search



888 Casino | Roulette TV Advert | Recipe London

recipe London
Subscribe

1,686 views


+ Audio Share More

Published on 24 Oct 2016
Working with 888 Casino, we develop a series of TV ads that focussed on the anticipation of the win, fulfilling our brand ambition to be the masters of suspense.
Recipe is a London-based creative agency. Independently owned, their clients include Coca-Cola, Powerade, glaceau smartwater, Bird's Eye, 888 Holdings and Energizer.

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The Slots Advert

YouTube Search



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recipe London
Subscribe

1,106 views

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