

COMPLAINT NUMBER	20/107
ADVERTISER	TAB
ADVERTISEMENTS	TAB, Addressed Mail
DATE OF MEETING	7 July 2020
OUTCOME	Upheld in Part, Not Upheld in Part, Settled in Part Advertisement 1 to be removed or amended

Summary of the Complaints Board Decision

The Complaints Board upheld one part of a complaint about two TAB addressed email advertisements. The Board said the use of the word “fix” in the context of a gambling advertisement was a breach of the high standard of social responsibility. The Board agreed to settle the complaint that one of the advertisements was misleading due to omission. The Board did not uphold the complaint in relation to the “specially for you” claim or the words “chasing” or “So Good?!”.

Advertisements

The TAB advertisements were two separate emails promoting various gambling options.

Advertisement 1

This email was titled "Weekend Highlights" and promotes different sports and betting options available in the coming week. The Greyhound section of the advertisement says “Two meetings today to get your chasing fix.”

Advertisement 2

This email was titled "Here is a Top Up Bonus offer specifically for you!" and is a personalised email that says “Simply make one deposit of \$ or more into your TAB account.” The offer gives the customer a time period and then says “and we will load your account with a \$50 Bonus Bet. How good?!” The offer is limited to 1 Top-up, only available until the time stated and expires within 14 days. The email ends with a Top Up Now button.

Summary of the Complaint

Email 1 – The Complainant is concerned the advertisement uses language which could entice people to gamble to excess. “two meetings today to get your chasing fix” is not socially responsible by using a word like “fix” which is linked to addiction and ‘chasing’ which encourages problem gamblers to chase their losses.

Email 2 – The Complainant is concerned this advertisement is misleading to not state the amount the customer needed to deposit and claiming to offer a bonus specifically for the customer when it is nothing unique. The Complainant is also concerned the phrase “How good?!” links gambling with enhanced attractiveness.

Issues Raised:

- Social Responsibility
- Truthful Presentation

Summary of the Advertiser's Response

The Advertiser defended the advertisements. It said promotional emails are optional and a self-exclusion programme exists where customers are able to opt out of the emails.

Email 1 – The Advertiser said the wording “Chasing is in context of greyhound racing and “fix” is in no way linked to encouraging gambling addictions and that the Complainant is searching for meanings in the words beyond their ordinary meanings.

Email 2 – A Top Up Bonus Bet Offer was a \$50 bonus bet once the customer had made a minimum deposit in their account. The Advertiser acknowledged a data error occurred, so the minimum deposit amount was omitted. This was rectified within 45 minutes. The Advertiser said this was not misleading as the bonus bet offer was honoured for anyone making a deposit of any amount.

The Advertiser said the “How good?! comment referred to how good the bonus bet offer was rather than any link to enhanced attractiveness.

The Advertiser confirmed the offer was specific to particular customers based on historical betting activity so there is a varying minimum deposit amount and bonus bet figure.

Relevant ASA Codes of Practice

The Chair directed the Complaints Board to consider the complaint with reference to the following codes:

GAMBLING ADVERTISING CODE

Principle 1: Social Responsibility: Gambling advertisements must be prepared and placed with a high standard of social responsibility to consumers and to society.

Rule 1(b) Gambling Harm: Gambling advertisements must not portray or represent anything that will, or is likely to, cause, condone or encourage harm from gambling.

Principle 2: Truthful Presentation: Gambling advertisements must be truthful, balanced and not misleading.

Rule 2(a) Truthful presentation: Gambling advertisements must not mislead or be likely to mislead, deceive or confuse consumers, abuse their trust or exploit their lack of knowledge. This includes by implication, inaccuracy, ambiguity, exaggeration, unrealistic claim, omission, false representation or otherwise. Obvious hyperbole identifiable as such is not considered to be misleading.

Relevant precedent decisions

In considering this complaint the Complaints Board referred to precedent Decision 19/043 which was ruled No Grounds for Proceed by the Chair of the Complaint Board.

The full versions of decisions since 2015 can be found on the ASA website:

<https://www.asa.co.nz/decisions/>

Decision 19/043 concerned a television advertisement for the TAB which offered a \$20 bonus bet for customers registering for a TAB account and depositing \$10. The Complainant was concerned the advertisement was contributing to problem gambling....

The Chair of the Complaints Board was of the view that the advertisement was promoting a legal product at an age appropriate time, with a predominantly adult audience.

Complaints Board Discussion

Advertisement 1 (Email 1)

Consumer Takeout

The Complaints Board agreed the likely consumer takeout of the advertisement is to both inform customers about betting opportunities available on greyhound races and to encourage gambling by suggesting customers place a bet to get their gambling “fix”.

Does advertisement 1 contain anything which could condone or encourage harm from gambling?

The Complaints Board noted the Complainant’s concern about the wording “chasing fix” in relation to enticing or encouraging excessive gambling. The Complaints Board agreed “chasing” did not meet the threshold to condone or encourage harm, given the context of greyhound racing where the dogs chase a lure.

However, the Board unanimously expressed concern about the use of the word “fix” in the context of a gambling advertisement. The Complaints Board said a common definition of a ‘fix’ is to temporarily satisfy an addiction and it can also be associated with simulating a ‘high’ or ‘rush’. The Board said the fact that the TAB was the advertiser inextricably linked the use of the word “fix” to gambling. The Board said linking gambling in any way with the language of addiction was a breach of the Gambling Advertising Code.

Has advertisement 1 been prepared with a high standard of social responsibility?

The Complaints Board said the word ‘chasing’ had not reached the threshold to breach Principle 1 or Rule 1(b) of the Gambling Advertising Code.

The Complaints Board said the word “fix”, in a gambling advertisement, had not met the high standard of social responsibility required of gambling advertising, taking into account context, medium, audience and product and was in breach of Principle 1 and Rule 1(b) of the Gambling Advertising Code.

Advertisement 2 (Email 2)

Consumer Takeout

The Complaints Board agreed the likely consumer takeout of the advertisement is that existing customers with betting accounts who have not opted out of receiving email promotions are being offered a top up bonus, if a deposit is made to their account.

Is advertisement 2 misleading?

The Complaints Board noted the Complainant was concerned the advertisement, sent to existing account holding customers, was misleading to say it was an offer specifically for them as well as omitting the minimum deposit amount required.

The Complaints Board noted the Advertiser’s response with regard to the claim the offer was “specially for you”. It agreed that because the personalised emails were based on the historical betting activity of each customer, the minimum deposit amounts and bonus bet figures could vary for each customer. This supports the “specifically for you” claim and prevents the advertisement from being misleading. The Complaints Board said this claim was not in breach of Principle 2 or Rule 2(a) of the Gambling Advertising Code.

With regard to the missing minimum deposit information, the Complaints Board agreed this omission may have mislead consumers. The Board said this ambiguity could have caused confusion or disadvantaged consumers who did not take up the offer due to the uncertainty of

the wording in the advertisement. The Complaints Board noted the omission of the minimum deposit data required to claim the bonus was a genuine error on the part of the Advertiser, which had been quickly rectified. The Board said the self-regulatory action taken by the Advertiser to correct the error and to honour the terms of the deal regardless of the level of deposit made by the customer meant that this part of the complaint was settled in relation to Principle 1, Principle 2 and Rule 2(a) of the Gambling Advertising Code

Does advertisement 2 contain anything which could condone or encourage harm from gambling?

The Complaints Board noted the Complainant was concerned the words “So Good?!” could enhance the attractiveness of gambling which could cause harm.

The Complaints Board agreed the likely consumer takeout of the phrase “So Good” is that the top up bonus on offer was a good offer to receive in exchange for making a deposit in your account. The Board did not consider the phrase met the threshold to breach Principle 1 or Rule 1(b) of the Gambling Advertising Code.

Has advertisement 2 been prepared with a high standard of social responsibility?

The Complaints Board said Advertisement 2 was socially responsible, taking into account context, medium, audience and product and was not in breach of Principle 1 or Rule 1(b) of the Gambling Advertising Code.

Summary

Advertisement 1 was Upheld in relation to the use of the word “fix” and Not Upheld in relation to the use of the word “chasing.”

Advertisement 2 was Settled in relation to the omission of minimum deposit information and Not Upheld in relation to the “specifically for you” claim or the use of the words “So Good?!”.

Outcome

The Complaints Board ruled the complaint was **Upheld in Part /Not Upheld in Part/Settled in Part.**

Advertisement 1 to be removed or amended.

APPEAL INFORMATION

According to the procedures of the Advertising Standards Complaints Board, all decisions are able to be appealed by any party to the complaint. Information on our Appeal process is on our website www.asa.co.nz. Appeals must be made in writing via email or letter within 14 calendar days of receipt of this decision.

APPENDICES

1. Complaint
 2. Response from Advertiser
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Appendix 1

COMPLAINT

I wish to make the following complaint regarding gambling advertising that I recently received from the NZ TAB. regarding what I consider are a number of breaches of the Advertising Code.

I look forward to your deliberation on the matters raised.

PRINCIPLE 1: SOCIAL RESPONSIBILITY

Rule 1 (b) Gambling Harm

- State or imply that there is a link between gambling and sexual or relationship success, or enhanced attractiveness. The attached e-mail 2 advertised wording states 'How good?! Which breaches the above rule re enhancing gambling with enhanced attractiveness.

E-mail 2 does not state the amount I had to deposit which is a breach under Rule 2 (a) Truthful Presentation likely to mislead eg confuse & inaccuracy.

E-mail 2 also breaches the above by stating 'here is a Top Up Bonus Bet offer specifically for you. This same offer was also received by a number of my friends which makes the advertising of it a breach of 'Truthful Presentation Guidelines' as it's misleading and falsely represents the true situation.

E-mail 1 is concerning due to the fact that the NZ TAB is under the Racing Act and also Gambling Act legislated to be promoting guidelines to adhere to regarding gambling harm possibly resulting from betting activities that they offer. Sending out marketing e-mails stating that customers can get their gambling 'fix' by betting is in my view not acting as a responsible gambling host. 'Fix' is seen as slang for someone who needs to perform that in order to pacify their addiction needs.

The Gambling Code recognises that gambling advertisements must not undermine the need for the prevention and minimisation of gambling-related harm, with particular regard for the need to protect vulnerable people. In my view associating gambling advertising to customers and using the word 'fix' clearly contravenes and underlines protection towards vulnerable people effected by problem gambling.

FURTHER INFORMATION FROM COMPLAINANT

E-mail 1 (copy forwarded in my earlier e-mail) is concerning due to the fact that the NZ TAB is under the Racing and Gambling Acts legislated to be promoting guidelines to adhere to regarding gambling harm possibly resulting from betting activities that they offer.

The purpose of the Gambling Code recognises that gambling advertisements must not undermine the need for the prevention and minimisation of gambling-related harm, with particular regard for the need to protect vulnerable people.

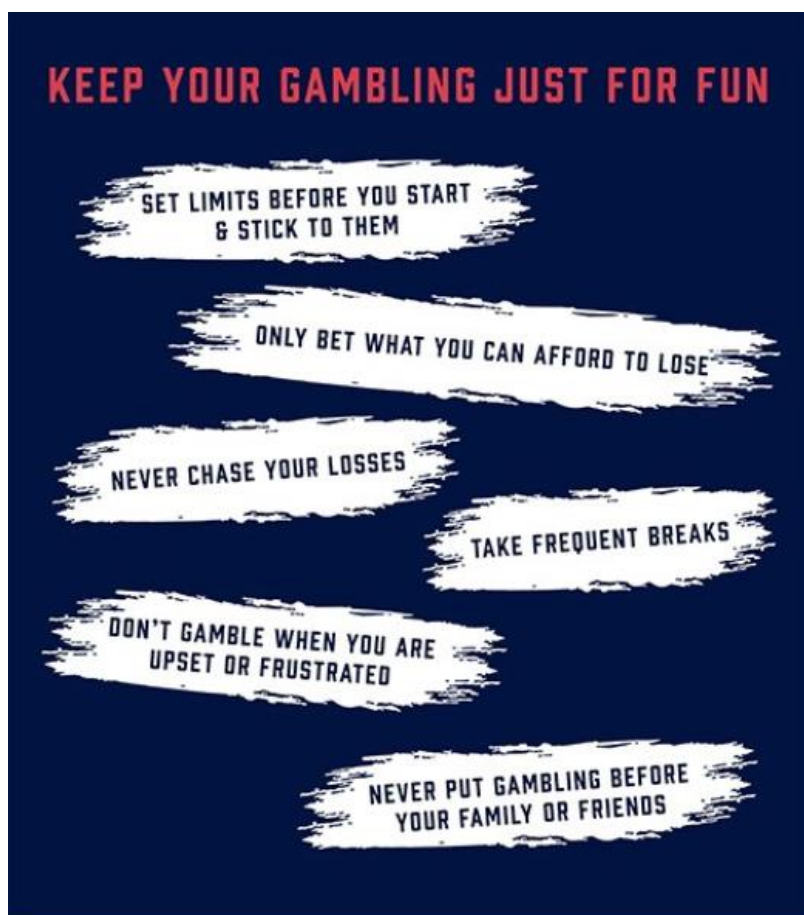
In my view associating gambling advertising to customers and using the word 'fix' is irresponsible and not befitting from a Company who is required under NZ Law to act as a responsible gambling host and has clearly in my view on this occasion contravened the above much needed requirements.

Any customers whether having been assessed or potentially having problem gambling tendencies should not be receiving an e-mail informing them that there are 24 races on two race meeting cards to get their 'chasing fix'. Obviously, a generic sent e-mail can't establish which are problem verse recreational punting customers so the slang word used on this occasion 'fix' is poor wording to use especially when it can no doubt be associated with any addicted person needing a so called 'fix' to feed their substance abuse. Gambling addiction was added to the 'Diagnostic and Statistical Manual of Mental Disorders ' in 1980 as a substance abuse disorder. The Diagnostic and Statistical Manual of Mental Disorders is the handbook used by health care professionals in the United States and much of the world as the authoritative guide to the diagnosis of mental disorders.

The word 'chasing' is also a concern with problem gambling. Although associated with Greyhound Racing as they 'chase' a lure this would again seem an inappropriate word with regard to problem gamblers when you consider the NZ TAB's public information stated below 'know if your a problem gambler'.

From the NZ TAB web site with regard to responsible gambling:

The TAB is committed to promoting responsible gambling and has various tools and procedures in place to help minimise the potential harm associated with gambling. The TAB aims to educate customers, and to assist them with making good decisions in relation to their gambling. The TAB wants all of its customers to follow these tips to help stay in control.



The third quote down 'never chase you losses' verse their e-mail advertising quote 'Two meetings today to get your 'chasing fix' contravene each other and is in poor taste when wording such as 'Two Greyhound meetings today to enjoy your Racing Entertainment to bet on' would be a far better look coming from a supposed Organisation who fully endorses and promotes responsible gambling.

The NZ TAB has no doubt a Problem Gambling Department and as such any advertising should be proof read by them as hopefully those in charge of that area would be educated well enough to determine and red flag that wording such as 'chasing to get your fix' is totally inappropriate with regard to acting as a responsible gambling host. Gambling becomes a problem when a punter 'chases' his losses and he and his family suffer from this type of betting 'fix' to feed their addiction.

The NZ TAB prides itself on been a responsible Gambling host but I consider they have failed to perform as such by using poor wording to entice people to gamble who have or may have undiagnosed gambling addictions and any future advertising should be done so using better and more appropriate wording.

<https://new.tab.co.nz/help/category/responsible-gambling>

Appendix 2

RESPONSE FROM ADVERTISER, RACING INDUSTRY TRANSITION AGENCY (RITA)

Re: Complaint 20/107

1. Thank you for providing the Racing Industry Transition Agency (**RITA**) with an opportunity to respond to the above complaint. At the outset, we note that RITA conducts racing and sports betting under its TAB brand, in accordance with the Racing Act 2003.

Promotional Emails and TAB Accounts

2. When establishing a TAB account (a **TAB Account**), customers are able to determine if they wish to receive promotional emails (**Promotional Emails**) from the TAB. After establishing a TAB Account, customers are able to “opt-out” of receiving Promotional Emails by:
 - a. Visiting the Account portal on the TAB website or the TAB Mobile App;
 - b. Contacting RITA/the TAB by email or phone (each Promotional Email is sent from a monitored email address, and RITA/the TAB has a Contact Centre that may be accessed by an 0800 number); or
 - c. Utilising the unsubscribe link contained in each Promotional Email.
3. RITA also has its own betting self-exclusion programme. RITA’s betting self-exclusion programme may be accessed by TAB Account customers at any time (to restrict their access to any of RITA’s betting products). Where a customer elects to use the self exclusion programme, they will be automatically unsubscribed from all Promotional Emails. RITA may also elect to place an exclusion on a customer itself - in these cases those customers will also be unsubscribed from all Promotional Emails.

The Complaint

4. The Complaint to the ASA concerns two Promotional Emails, sent on 14 May 2020 and 15 May 2020. The Complainant has referred to the 14 May 2020 Promotional

Email as Email 2, with the 15 May 2020 Promotion Email as Email 1. For the purpose of this response, RITA will use the same references.

5. The Complainant alleges that RITA has breached the following principles of the Advertising Standards Authority (**ASA**)'s Gambling Advertising Code (the **Code**):
 - a. **Principle 1 Social Responsibility, Rule 1(b) Gambling Harm:** Gambling advertisements must not portray or represent anything that will, or is likely to, cause, condone or encourage harm from gambling; and
 - b. **Principle 2 Truthful Presentation, Rule 2(a) Truthful Presentation:** Gambling advertisements must not mislead or be likely to mislead, deceive or confuse consumers, abuse their trust or exploit their lack of knowledge. This includes by implication, inaccuracy, ambiguity, exaggeration, unrealistic claim, omission, false representation or otherwise. Obvious hyperbole identifiable as such is not considered to be misleading.
6. As we have not been advised of the Complainant's details, in accordance with the ASA's privacy policy, we are unable to provide further specific background that may be relevant. However, we do not dispute that Emails 1 and 2 were sent to selected "promo yes" TAB account customers.

Email 2

Background

7. Email 2 was a Promotional Email sent to selected customers. Email 2 detailed a Top Up Bonus Bet Offer (the **Offer**). To redeem the Offer, customers would need to make a deposit into their TAB account above a specified threshold (the **Minimum Deposit Amount**). Following the Minimum Deposit Amount being made, a \$50 Bonus Bet would be applied to the customer's TAB Account.
8. As the Board will be aware, Email 2 does not state the Minimum Deposit Amount. This was a result of a data issue when sending this campaign to selected customers. However, RITA is concerned that the Complainant has failed to provide the ASA with relevant information.
9. RITA staff identified that the Minimum Deposit Amount had not been populated due to a data error.¹ Within 45 minutes of sending Email 2, RITA sent a new Email (**Email 3**) which included the Minimum Deposit Amount and advised impacted customers to disregard Email 1, and apologising for any confusion that may have been caused. An example of Email 3 is included as **Appendix 1**.
10. Additionally, RITA applied the Bonus Bet where a customer did make a deposit during that 45-minute window, i.e. the TAB determined that a customer had redeemed the

¹ Different customers receive different values for promotional offers. For example, the Complainant appears to be a customer who received a \$50 Bonus Bet Offer, while others may have received \$20 or \$100. A mail merge is done before sending Promotional Emails which inputs the relevant amounts. This is where the data issue occurred.

Offer if they made a deposit for any value (\$0.01 or above) during the time period between receiving Emails 2 and 3, effectively honouring the offer as it was mistakenly presented in Email 2 (until the correction was issued).

Complaint

11. In respect of Email 2, the Complainant considers that RITA has breached both Rule 1(b) and Rule 2(a) of the Code.

Rule 1(b) Gambling Harm

12. The Complainant cites the following Guideline from the Code:

Gambling advertisements must not... state or imply that there is a link between gambling and sexual or relationship success, or enhanced attractiveness.

13. The Complainant considers the words “How good?!” in Email 2 breaches this Guideline.
14. Respectfully, this is misguided. The words are used to ask the customer how good the Offer is. A typical deposit to a TAB Account does not provide a customer with any reward. The deposit is applied to the TAB Account and may be used for racing and sports betting with RITA. However, if the customer redeems the Offer they are provided with a Bonus Bet, in addition to their deposit. Hence, there is an additional benefit provided for this Offer.
15. Asking a customer how good the Offer is, is a legitimate marketing tool that does nothing to portray or represent anything that will, or is likely to, cause, condone or encourage harm from gambling. Specifically, it does not remotely suggest that the gambling being made available to a customer by making a deposit is linked to sexual or relationship success, or enhanced attractiveness.

Rule 2(a) Truthful Presentation

16. The Complainant considers that Email 2 was untruthfully presented by RITA on the basis that:
 - a. It did not contain the Minimum Deposit Amount; and
 - b. The Offer was not specific to the Complainant.
17. As noted in paragraph 9 above, the TAB accepts that Email 2 omitted the Minimum Deposit Amount. However, it was not misleading as RITA honoured the Offer in Email 2 until impacted customers received Email 3. RITA made a mistake, but acted in good faith while promptly remedying it.
18. Within Emails 2 and 3, it is noted that the Offer is “specifically for you”. Additionally, the terms and conditions of the Offer, included within the Emails, states:

To qualify for this promotional offer, customers must receive the personalised 'TOP UP BONUS BET' email direct from the TAB...

19. The purpose of stating that the Offer is “specifically for you” is because:
- a. The Offer is not universally provided to TAB Account holders, only specific customers receive the Offer; and
 - b. The determination on whether the customer receives the Offer is specifically determined by the customer’s historical betting activity. This means that the Offer will have a varying Minimum Deposit Amount and Bonus Bet depending on who the specific customer is.
20. Further, it is a targeted campaign where only the recipient of the specific email is entitled to redeem the Offer. For example, if Email 3 was forwarded to another customer that customer would not be able to redeem the Offer.
21. For completeness, we again reiterate that the ASA’s privacy policy has precluded RITA providing additional information that would have assisted its response to this specific portion of the complaint.

Email 1

Complaint

22. The Complainant is concerned with the following line within Email 1, and considers that it breaches Rule 1(b) of the Code.

Greyhounds

Two meetings today to get your chasing fix.

23. Specifically, the complaint addresses the words “chasing” and “fix”. We deal with them in turn. Generally, RITA considers that the Complainant is searching for meanings beyond their plain and ordinary meaning, and the context in which they are written.

Chasing

24. This aspect of the complaint is without merit. “Chasing” is to greyhound racing what “footy” is to Rugby. The Complainant accepts that position by noting that chasing is associated with greyhound racing, as the competitors (the greyhound dogs) “chase” the lure.
25. There is no link between describing the sport of greyhound racing as “chasing”, and the action of gamblers “chasing” their losses as the Complainant tries to establish. RITA neither attempted to establish nor established any such link in Email 1.
26. The use of the word chasing in this instance does not condone or encourage harmful gambling, or encourage consumers to participate in gambling excessively or beyond their

means. Setting limits before gambling and sticking to them, only betting what you can afford to lose, and never chasing losses are all key messages within RITA's current responsible gambling programme and messaging (see <https://new.tab.co.nz/help/category/responsible-gambling>).

Fix

27. The Complainant considers that the use of the word "fix" here is used to encourage a problem gambler to satisfy their harmful addiction. However, as above, if this word was used alongside Rugby there would be no complaint. For example, "Two matches today to get your footy fix" does not portray or represent anything that will, or is likely to, cause, condone or encourage harm from gambling. RITA accepts that if it had instead said "two meetings today to get your gambling fix" then this would have required a different assessment.
28. One of RITA's statutory objectives under the Racing Act 2003 is to promote the racing industry (section 8(a)). Accordingly, it is also sending Promotional Emails from the TAB to promote the sport of racing. Email 1 achieves this by promoting greyhound racing that was available for viewing on that day. Further, greyhound racing was the first domestic sport back in action after the Covid-19 Level 4 lockdown.
29. Accordingly, RITA does not consider that it condoned or encouraged harmful gambling, or encouraged consumers to participate in gambling excessively or beyond their means by using the word "fix" in this instance.

Summary

30. RITA does not accept that it has breached the Code with Emails 1, 2 or 3.
31. RITA is committed to responsible gambling. More about the TAB's responsible gambling framework is available here: <https://www.rita.org.nz/responsible-gambling> and <https://new.tab.co.nz/help/category/responsible-gambling>. The latter is available from a link on the homepage of the TAB's website.
32. Should the Board have any questions or require any further information from RITA, please let us know.