

COMPLAINT NUMBER	21/099
ADVERTISER	Lotto NZ
ADVERTISEMENT	Lotto NZ, Email
DATE OF MEETING	23 March 2021
OUTCOME	Not Upheld No further action required

Summary of the Complaints Board Decision

The Complaints Board did not uphold a complaint about a Lotto NZ email advertisement promoting a subscription to Powerball, by offering the chance to enter a draw to win \$10,000. The Board said the advertisement did not condone or encourage harm from gambling.

Advertisement

The Lotto NZ email advertisement, which was personalised to individual MyLotto customers, said: "Final call to be in the draw to win \$10,000! All you need to do is start a Powerball Subscription. Setting up a Subscription is simple and means you'll never miss a Powerball draw... T&Cs apply - ENTER NOW". (*underlining indicates hyperlinks*) The imagery in the advertisement was two deck chairs set up on a sandy beach, with bank notes and coins floating in the air between them.

Summary of the Complaint

The Complainant was concerned the advertisement encouraged gambling by offering the possibility of a cash prize for those who started a Powerball subscription.

Issues Raised:

- Social responsibility
- Gambling harm

Summary of the Advertiser's Response

The Advertiser said subscriptions for Lotto, Powerball and Strike games have been available since 2013. They allow people to play in a safe online environment where there are strict controls on how much they can spend. From time to time, Lotto has run promotions which offer the chance to win a one-off prize.

The Advertiser said this promotion email advised registered MyLotto players about the Powerball subscription promotion. Subscriptions allow players to decide when and how they play, and they can be paused or cancelled at any time. Lotto NZ's responsible gaming programme and Harm Minimisation Committee ensure compliance with all relevant codes and legislation.

The Advertiser said the imagery used, the educational content, the Play Smart messaging and the target audience (those 18 years and over), all mean the advertisement was socially responsible.

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.

Purpose of the Code

The purpose of the Gambling Advertising Code (Code) is to ensure that gambling advertising is conducted in a manner that demonstrates a high standard of social responsibility. All gambling advertisements must be legal, decent, honest and truthful and respect the principles of fair competition. This 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 children, young people and other vulnerable persons.

Relevant precedent decisions

In considering this complaint the Complaints Board referred to two precedent decisions, Decision 19/043 which was No Grounds to Proceed and 20/107 which was Upheld in part, Not Upheld in part, Settled in part.

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

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

Decision 19/043 concerned a TAB television advertisement which showed two men on inflatables in a swimming pool racing to reach the last sausage, only for a dog to steal it. The voiceover and text said “Love racing this summer. Join the TAB, deposit \$10 and get a \$20 bonus bet. TAB – Now you’re in the game.” The Complainant was concerned the advertisement was contributing to problem gambling by offering a \$20 incentive to gamble.

The Chair of the Complaints Board said the TAB was entitled to promote its product within the constraints of the advertisement’s afforded rating of (General Except Children) viewing times. The Chair said the advertisement did not target children, playing during a programme with a mainly adult audience.

Decision 20/107 concerned two TAB email advertisements. The first one included the text: “Two meetings today to get your chasing fix.” The second one said “Simply make one deposit of \$ or more into your TAB account... and we will load your account with a \$50 Bonus Bet. How good?!”

The Complaints 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?!”

Complaints Board Discussion

The Chair noted that the Complaints Board's role was to consider whether there had been a breach of the Gambling Advertising Code. In deciding whether the Code has been breached the Complaints Board has regard to all relevant matters including:

- Generally prevailing community standards
- Previous decisions
- The consumer takeout of the advertisement, and
- The context, medium, audience and the product or service being advertised.

Consumer Takeout

The Complaints Board agreed the likely consumer takeout of the advertisement was it was encouraging subscribers to MyLotto to start a subscription to Powerball.

Did the advertisement portray or represent anything that will, or is likely to, cause, condone or encourage harm from gambling?

The Complaints Board said the advertisement did not portray or represent anything that was likely to, cause, condone or encourage harm from gambling. The Board noted that gambling products may be advertised, as long as the advertising is conducted in a manner that demonstrates a high standard of social responsibility.

The Complaints Board confirmed that in this case Lotto NZ was entitled to promote its products. The Board noted the advertisement was an automatically generated email sent to MyLotto subscribers, customers who have already agreed to buy at least one ticket and "had opted in to receive marketing and promotional emails from Lotto NZ"¹.

The Complaints Board noted MyLotto subscribers are people aged 18 or over who have registered with MyLotto and agreed to abide by the relevant terms and conditions. They can choose to end their subscription at any time, without running the risk of being penalised.

Was the advertisement prepared and placed with a high standard of social responsibility to consumers and society?

The Complaints Board said the advertisement was prepared and placed with a high standard of responsibility to consumers and society. The Complaints Board noted that Lotto NZ said it operates a responsible gaming programme that includes mandatory spending limits for all registered MyLotto players, which apply to all purchases on MyLotto, including subscriptions. The Advertiser's Harm Minimisation Committee had also vetted the email advertisement against the Advertising Standards Code and Gambling Code.

The Complaints Board said the advertisement 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 Standards Code.

Outcome

The Complaints Board ruled the complaint was **Not Upheld**.

No further action required.

¹ See Response from Lotto NZ.

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 received an email from Lotto on Feb 23, 2021, 5:54 PM offering me a chance to win 10,000 if I subscribe to maintain getting a powerball ticket each week, month etc.

I feel this is so wrong as it encourages gambling. Not all people are good at saying no to such offers and others can be desperate to try and make money through gambling.

I am surprised at the amount of advertising there is for Lotto and that this is not classed as gambling. This particular advert/offer though is totally unacceptable.

Appendix 2

RESPONSE FROM ADVERTISER, LOTTO NZ

RE: Lotto NZ Addressed Mail – Complaint 21/099

Thank you for your letter dated 8 March regarding the complaint to the Advertising Standards Authority (ASA) with regards Lotto NZ's MyLotto electronic digital message (eDM) regarding MyLotto's Subscriptions promotion.

Following the complaint referred to in your letter, you have requested comments from Lotto New Zealand in regards to:

- Principle 1 of the Gambling Advertising Code; and
- Rule 1(b) of the Gambling Advertising Code

Lotto NZ believes that our email advertising for MyLotto's Subscriptions promotion complies with the Gambling Advertising Code and we intend to defend this complaint. Please find our detailed response below.

Background and context:

Lotto NZ's MyLotto Subscriptions

In 2013, Lotto NZ introduced a subscription service (Subscriptions) for our Lotto, Powerball and Strike games (known as the Lotto Family), allowing players to make sure they never miss a draw. Subscriptions provide a way for people to play Lotto and Powerball in a safe, online environment where there are strict controls on how much they can spend.

Lotto NZ does not provide individual incentives to people to play our games, as we know that can increase the potential for gambling harm. However, from time to time we run promotions that give players the chance to win a one-off prize, which is paid directly into the winner's bank account – for example, this includes promotions specific to Subscriptions players.

Subscriptions are intended to provide regular Lotto players with a convenient way to play their preferred Lotto or Powerball ticket on a regular basis. When creating a Subscription, players can choose from the full range of Lotto family tickets, which begin at \$5.80. Players

then choose when they would like to play (Wednesday, Saturday or both) and the length of time they would like the Subscription set up for (3, 6 or 12 months).

Subscriptions work on a 'pay as you go' basis, and allow players to choose how they would prefer to pay for their Subscription – either from their MyLotto wallet only or by allowing a debit or credit card to be charged if they have insufficient funds in their MyLotto account. It is important to note that players are always in control of their Subscription and can choose to pause or cancel their Subscription at any time without incurring any penalty.

MyLotto's February Subscriptions Promotion

The eDM referenced by the complainant was sent on 23 February 2021 with the aim of advising registered MyLotto players that Lotto NZ was running a promotion giving players the chance to be in to win a one-off prize of \$10,000 if they created a new Subscription by 28 February 2021.

In order to enter the promotion, players needed to create a Subscription and successfully purchase a ticket via the Subscription during the promotional period (1 – 28 February 2021). Should a customer choose to create a Subscription, they are required to complete the usual process for setting up a Subscription which includes choosing which ticket they would like to purchase, when they would like to play and how long they would like the Subscription to run for.

As with all Subscriptions, players were not required to maintain their Subscription for a minimum length of time should they wish to enter the promotion, and would not incur any additional charges or fees should they choose to pause or stop their Subscription at any time. All Subscriptions purchases are subject to MyLotto's spending limits of \$150 per week or \$500 per month, as outlined earlier in this response.

Lotto NZ's responsible gaming programme

Lotto NZ operates a world-class responsible gaming programme, which has a strong focus on harm prevention and aims to equip our customers with the tools, information and resources to enable them to play safely. Lotto NZ has been certified to the highest possible level of responsible gaming by the World Lottery Association (WLA) since 2015, and we are committed to driving the continuous improvement required to maintain this accreditation.

Our responsible gaming programme is predominantly driven by a clear desire to prevent harm, supported by activities related to detection and intervention for the small number of people who do experience harm from our games. Lotto NZ has a wide range of responsible gaming controls in place from the initial design of our games through to training of our staff and retailers, across all advertising and communications, and specific controls on our online channel, MyLotto.

This includes mandatory spending limits in place for all registered MyLotto players which apply to all purchases on MyLotto – including Subscriptions. Currently, all players have a weekly spending limit of \$150 and a monthly spending limit of \$500. Of the \$150 weekly spending limit, no more than \$50 can be spent on Instant Kiwi Online games. In addition, all of our email communications – including all emails to players regarding their Subscriptions – include a prominent message reminding people of our commitment to responsible gaming, with a link to the range of tools and resources available on MyLotto. More information about Lotto NZ's commitment to responsible play and how this is communicated in our advertising materials is included later in this response.

Lotto NZ has an established Harm Minimisation Committee (the HMC) who assess all Lotto NZ games and marketing communications to ensure that the responsible gaming principles

for the developing, marketing and retailing of all Lotto NZ games and communications are adhered to. The HMC consists of senior representatives from around the business who meet twice weekly to assess all submitted content.

Prior to being sent, the eDM referenced by the complainant was reviewed by the HMC to ensure compliance with all relevant codes and legislation, including Lotto NZ's established internal Harm Minimisation guidelines and the following codes and legislation:

- Advertising Standard Authority Standards (ASA) Standards Code
- ASA Code for Advertising, Gambling and Gaming
- ASA Children and Young People's Advertising Code
- Gambling Act 2003
- Gambling, Fair Trading, Commerce and Consumer Guarantees Acts

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

Lotto NZ believes that the eDM referenced by the complainant was not in breach of Principle 1 of the Gambling Advertising Code. There are four key aspects of this eDM that Lotto NZ carefully considered prior to the marketing communication being sent to ensure that the email was prepared and placed with a high standard of social responsibility. These were:

1. The Visual imagery used to advertise the Subscriptions promotion within this eDM

The imagery used within this eDM to advertise the Subscriptions promotion was designed with the intention of reflecting the idea that Subscriptions allow players to relax as their ticket is taken care of, while clearly explaining the promotional offer and helping recipients imagine what they would do if they won the \$10,000 prize, without overstating the prize itself or the odds of winning.

Lotto NZ chose to use imagery reflective of a classic Kiwi summer, with the eDM featuring two deck chairs on the beach surrounded by Pohutukawa trees. Three notes and four gold coins appear between the chairs in this image to represent the moderate size of the prize offered with this promotion.

Within this beach scene, the eye is primarily drawn to the copy itself which states: "Start a Powerball subscription and go in the draw to win \$10,000". This clearly states that the promotion offers players a chance to win a one-off \$10,000 prize, rather than incentivising players with an immediately, individual cash payment which is known to increase the potential for gambling harm.

2. The Language used in this eDM to describe Subscriptions, their benefits and the promotion

As this eDM was sent in the final week of MyLotto's Subscription Promotion, the copy advised players that there was limited time left should they wish to enter the promotion. Lotto NZ was careful not to imply a sense of urgency when developing this eDM both through considering the language used in the copy as well as the timing of when the message was sent.

Despite leading with messaging advising players of the Subscriptions promotion, the majority of content within the eDM copy was focused on educating players of the Subscriptions service. This includes information about how a Subscription works, that players select the ticket and

days they would like to play, and can choose the length of time they would like to create the Subscription for.

A link to the Promotion Terms and Conditions was also included in this eDM, clearly positioned free of any other copy immediately above the call-to-action.

Final call to be in the draw to win **\$10,000!** All you need to do is start a Powerball Subscription.

How does a Subscription work?

Setting up a Subscription is simple and means you'll never miss a Powerball draw. You can choose which days you want to play, the type of ticket you want and if you want to subscribe for 3, 6 or 12 months. Once you've set it all up, you'll automatically be in the draws. Easy!

So not only does a Subscription make playing Powerball easy peasy, start a Subscription before the end of February and you'll be in the draw to win **\$10,000!**

[T&Cs apply.](#)

ENTER NOW

3. The messaging and placement of responsible gaming information included in the eDM

At all times Lotto NZ is committed to supporting customers to play responsibly, which is communicated to players through our Play Smart responsible gaming branding. As part of this commitment, Play Smart messaging is included in all eDMs to provide players with useful information, tools and advice about how to play smarter, which is all about being informed, having fun and knowing your limits.

Prominent Play Smart messaging was included in this eDM immediately below the call-to-action. The purple branding of Play Smart is designed to stand out from our game-based marketing materials, which are typically designed in blue or green colour-ways. This eDM tile included additional information specific to Lotto NZ's Subscriptions service, advising players that "Subscriptions still give you the flexibility to stop playing at any time so you're always in control of your play and spend".

Upon clicking the Play Smart tile, players are taken to the Play Smart homepage on MyLotto which provides a clear set of tips and tools to help support customers playing both in-store and online.



Subscriptions still give you the flexibility to stop playing at any time so you're always in control of your play and spend.

4. The audience targeted by the eDM

Careful consideration was taken when determining the targeting of this eDM to ensure the message was sent in accordance with appropriate levels of social responsibility. While the Lotto family of games are not age-restricted products, Lotto NZ is committed to ensuring all advertising and marketing communications are targeted primarily at those aged 18 years or older. Additional segmentation occurred, with Lotto NZ only sending this eDM to players who did not already have an active Subscription in place, and who had opted in to receive marketing and promotional emails from Lotto NZ.

Lotto NZ is committed to responsible play, and aims to equip our customers with the tools, information and resources to enable them to play safely. As part of this, all MyLotto players can choose to self-exclude themselves from playing one or all of our games for a length of time of their choosing. Once a self-exclusion is in place, this cannot be changed by either the player or Lotto NZ.

When a player decides to self-exclude from playing any of our games, Lotto NZ ensures that their email address is excluded from receiving any eDMs for the period of their exclusion. This measure has been put in place to ensure that Lotto NZ's email marketing activities do not target players who have actively chosen not to play our games.

The detailed segmentation outlined above resulted in the eDM being sent to approximately 344,000 registered MyLotto players.

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.

Lotto NZ considers that this eDM does not breach any aspect of Rule 1(b) of the Gambling Advertising Code, with all content included within this digital marketing being created, reviewed and approved in accordance with the Code and Lotto NZ's established internal harm minimisation guidelines.

In particular, this eDM does not state or imply a promise of winning the \$10,000 prize on offer, nor does it portray unrealistic outcomes from winning. Visually, the imagery of a relaxing Kiwi beach scene was chosen as a summer holiday would be something the winner would be able to achieve with their winnings. Similarly, a small number of cash notes and gold coins were included in the imagery of this eDM, representing the moderate nature of the prize.

While creating a Subscription sets in place an ongoing purchase of the customer's chosen Lotto ticket for a 3, 6 or 12 month period, players are not bound to keep the Subscription active for a set period of time and are not penalised should they decide to end their Subscription ahead of time. This is something Lotto NZ is conscious of ensuring players are well aware of to ensure players know that they can end their Subscription at any point without needing to provide a reason. As a result, messaging highlighting this was included prominently in the purple 'Play Smart' tile of the eDM.

As this eDM was sent in the final week of MyLotto's Subscription Promotion, the copy advised players that there was limited time left should they wish to enter the promotion. Lotto NZ was careful not to imply a sense of urgency when developing this eDM both through considering the language used in the copy as well as the timing of when the message was sent.

While the copy leads by stating that this was the “final call to be in the draw to win \$10,000”, there was no urgency included in any call-to-action within the eDM – for example, the eDM includes a simple ‘Enter Now’ button.

As this promotion ended on 28 February 2021, this advertising is no longer active. However, as detailed in this response, we do not believe there is an issue with running a similar campaign in future.

If you have any further questions, please do not hesitate to get in touch.

We thank you for the opportunity to respond to this complaint.