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Behind the billboard--regulating gambling ads

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Commercial analysis: What are the restrictions on advertising in the gambling industry? Alice Himsworth, associate in the media, communications and technology team at Olswang, explores the current forms of regulation and makes some predictions about potential developments.

What issues arise in this area of advertising?

Gambling advertising is a sensitive area. There are a lot of interested parties, from the gambling operators themselves, who would obviously prefer greater flexibility, to groups who are against gambling as a concept altogether, who would prefer that gambling wasn't advertised at all.

Advertising in this sector is subject to a significant amount of regulation and Advertising Standards Authority (ASA) complaints are common.

The regulation comes in a number of different forms:

- o there is a licensing requirement--with the limited exception of operators who block access to UK users, all those who advertise facilities for gambling must hold a gambling commission licence and must comply with the licence conditions attached to those licences
- o the Committee of Advertising Practice (CAP) and Broadcast Committee of Advertising Practice (BCAP) codes apply and include specific sections that address gambling advertising--these focus on ensuring that gambling advertising is socially responsible and not misleading
- o the operators have also committed to comply with the gambling industry code on socially responsible advertising, which addresses the watershed and use of 'gambleaware' messaging

There has been increased scrutiny of gambling advertising over the past couple of years and operators are responding to this by making additional commitments to social responsibility, in part influenced by a preference for self-regulation rather than that imposed by government or the regulator.

Towards the end of 2014 William Hill, Ladbrokes, Coral and Paddy Power established the Senet Group. In addition to funding a responsible gambling campaign, this group made three pledges around how they would advertise. They agreed that they would:

- o not advertise free bets or bonuses on television before 9pm
- o not advertise controversial fixed-odds betting terminals in betting shop windows
- o give 20% of their window space to responsible gambling messages

How has the ASA sought to deal with them?

The CAP has produced some guidance in this area for those advertising gambling services. One note specifically addresses free bets and bonuses prompted by the number of ASA adjudications during 2013 that concerned these types of offers. The concern was that it wasn't being made clear when a customer signed up for an introductory offer of say £40 in free bets that there were conditions attached to the use of such bets and wagering requirements before withdrawals could be made. The CAP guidance encourages operators to be up front about how these promotions would work.

The second CAP note was a more general note giving guidance on the rules of gambling advertising.

The importance of the CAP advice is evidenced by the specific references made to compliance with this guidance in the updated licence conditions and codes of practice attached to each gambling licence--which will be effective from 8 May 2015. Previously the codes included a more general requirement to abide by relevant advertising rules.

The ASA also consulted on the effectiveness of its regulation over the course of 2014. This consultation formed part of a wider Department for Culture, Media and Sport consultation that has also involved the Gambling Commission and the Remote Gambling Association.

Is there any case law or are there any recent ASA adjudications in this area?

There isn't so much case law but certainly the ASA is very active when it comes to gambling promotions and there are a number of ASA adjudications.

One of the most recent adjudications from this year is about an introductory offer of a 'risk free bet'. The ASA found that significant conditions were not made clear. Such complaints are an area of focus.

In a similar way to alcohol advertising there are also restrictions on the way that advertisers can portray people who are engaged in gambling. There have been complaints and rulings against adverts because they've portrayed someone as becoming more attractive as a result of gambling.

Another example from last year is an adjudication against one of a series of adverts for Ladbrokes which included the statement 'when you win it's skill, when you lose it's bad luck'. This was viewed by the ASA as condoning an irresponsible attitude towards gambling.

What should lawyers advise their clients?

The key requirement is to ensure that you have the appropriate licences in place because advertising gambling without an appropriate licence is a criminal offence.

Clients should also be aware that they are advertising in a sensitive area. It's important to strike a balance between effective, innovative advertising and advertising that pushes the boundaries to the extent that it encourages further regulation. So it's about being aware of not touching on sensitive issues, not causing offence and, in particular, on avoiding misleading customers--especially when advertising free bets and bonuses. Giving customers enough information to make informed decisions is key.

Are there likely to be any developments in the future?

Definitely. It's such a sensitive and active area and it's changing all the time. Just the other week we saw the publication of updated licence conditions by the Gambling Commission that included updated requirements about gambling advertising.

We've recently seen the formation of the Senet Group, which may expand as other operators join it and we may see other operators forming alternative groups that make different commitments to social responsibility.

Interviewed by Fran Benson.

The views expressed by our Legal Analysis interviewees are not necessarily those of the proprietor.