

Gambling advertising Q&A

Question 1

Earlier this year, the Advertising Standards Authority (ASA) ordered online gambling outfit Paddy Power not to repeat the approach it adopted in a newspaper ad which showed a "short man" in the back of stretch limo flanked by women under the title "Who says you can't make money being short?" Taking this as an example, how do you think online or mobile gambling companies need to ensure that they don't face such awkward situation and even escape damaging their brand/ reputation?

Answer

Gambling companies advertising in the British market must comply with the Codes of Practice laid down by the Committee of Advertising Practice (CAP) who produce both broadcast and non broadcast codes specifically addressing the advertising of gambling. In addition, there is an industry Code of Practice on socially responsible advertising. Marketing departments should arm themselves with a checklist compiled from the codes to sanity check any advertising copy before publication or broadcast. Perhaps more importantly, any advertising agencies used should be asked to demonstrate that they are aware of the codes and understand the drivers behind the rules.

Naturally, the best adverts are often the most cutting edge or 'off the wall' so, in cases of doubt, a gambling operator might want to refer the proposed campaign to CAP's free Copy Advice service or the Clearcast service which broadcasters subscribe to. However, neither can guarantee that an advert consider within the rules will not later on be the subject of an

adverse adjudication by the Advertising Standards Authority (ASA). This is indeed what happened in relation to the Intercasino advertising campaign in April this year which was cleared by Clearcast but later found by the ASA to be in breach of the CAP code.

Alternatively, a gambling operator could simply run any controversial campaigns past its gambling lawyer who will be familiar with the policy imperatives behind the provisions of the various Codes.

Question 2

Last year, it was shared that the Gambling Act modernises gambling advertising rules making it possible for some new forms of advertising to be allowed, including on TV, and brings consistency to the advertising rules placed upon the industry. What's your opinion regarding the same?

Answer

The Gambling Act has certainly introduced greater consistency into the law of advertising gambling. Under the previous regime (ie prior to 1 September 2007), there was an almost total ban on advertising land based casino gaming and poker by British operators but fewer restrictions on foreign internet casino and poker operators. In contrast, British bookmakers could advertise but foreign bookmakers were banned, as were foreign lotteries. Bingo operators, on the other hand, had unrestricted advertising.

Now the general rule is that all British licensees and those in the European Economic Area (27 EU member states plus Norway, Liechtenstein

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and Iceland) and those on the White List (Alderney, Isle of Man, Tasmania and recently Antigua) can all freely advertise all types of gaming and betting in the British market. Foreign operators (ie those not in the categories mentioned) cannot advertise nor can non-British licensed lotteries.

Question 3

The Gambling Act has reformed the rules on gambling advertising, previously inconsistent across different sectors. Can you provide info on how has this resulted in newer opportunities for different sectors casinos, bingo etc? How have remote gambling and betting benefited from new the policy?

Answer

The casino and poker sectors have probably benefitted the most in terms of being able to advertise on TV and access a wider audience legally than they have ever been able to in the past. TV advertising has, in my opinion, been quite tentative so far and it seems that the operators (and the regulators) are still feeling their way and establishing the boundaries of what is or is not permissible in terms of the Codes and general good taste. On the whole, the advertising by gambling companies has largely been fairly understated and compliant. I anticipate that there may be some stronger pushing of the boundaries as we move further into a difficult economic market.

Question 4

Gambling sectors such as betting and gaming have today options to advertise in non-broadcast and broadcast media. At the same time, what do you think such companies need to be wary of while using mass media aggressively be it for branding or customer acquisition in your opinion?

Answer

About two years ago there was a mini explosion in the advertising of online gambling, particularly casino and poker. This not only exploited the uncertainty in the application of the 1968 Gaming Act to the world wide web but more importantly was becoming ubiquitous, particularly for commuters in London who saw adverts on the tube, buses, taxis etc. The DCMS and the Gaming Board (predecessor to the Gambling Commission) reacted by issuing new guidelines on what they thought was illegal and by threatening to take legal action. There was a perceived calming down in the advertising campaigns and no widespread enforcement was necessary. Therefore, my first point is that I believe the appetite for aggressive gambling advertising has its limits in terms of the reaction of both the public and the regulators.

Secondly, gambling operators licensed in Britain have detailed social responsibility obligations including being careful not to encourage irresponsible gambling or failing to protect the vulnerable. However, provided their advertising is in compliance with the Codes, there is no reason why an aggressive marketing campaign should conflict with these obligations.

Question 5

With reference to ASA's Gambling Compliance Survey 2007, it was shared that an exceptionally high compliance rate, with 99% of ads surveyed adhering to the Advertising Codes. Is there anything you would still like to change or challenge or do you think corporate social responsibility is being approached in the right way today?

Answer

Government policy on gambling officially changed with the introduction of the Gambling Act 2005. It is no longer a morally frowned upon activity where, in many cases, gambling

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operators could only be licensed if they could prove that they are only supplying unstimulated demand. It is now a legitimate leisure pursuit. In fact, the change was inevitable when the government introduced the National Lottery back in 1996 and gave the Lottery the freedom to advertise on a massive scale across all forms of media.

Accordingly, gambling companies should be and are free to advertise their products and services. They do so however within a tight framework set down by the Codes. If anything, there could be a move towards some relaxation of the Codes as the industry is clearly being efficient in self regulating.

Question 6

The Act created a new regulator for gambling, the Gambling Commission, replacing the old Gaming Board for Great Britain. Can you provide info on power of this Commission be it for investigation, imposing fine or even revoking the licence?

Answer

The Commission is a modern regulator and, as such, is equipped with a wide range of powers through the spectrum from standard compliance checks to criminal prosecution. It has the ability to enter business premises, question gambling operators and their staff and gain access to documents. It has wide powers to undertake a regulatory review of operating licences, to suspend or revoke them and to apply financial penalties.

The challenge for the Commission is that these

very considerable powers are exercised responsibly and, most importantly, by thoroughly trained officers who understand the principles that they must adhere to of proportionality, transparency, consistency and accountability.

Question 7

What do you recommend when it comes to reaping maximum benefits from the new Act? How can companies ensure they are achieving the same and not faltering at any stage?

Answer

Be informed. We are in a regulatory environment that is more complex than ever before. For British licensees the freedom to operate, be creative and flexible is still there provided an licensee does not go beyond the parameters set by the various levels of rules – the Act, the Statutory Instruments, the Licence Conditions, the Codes of Practice, the Guidelines and Advice.

The well informed operator will not fall foul of any rules inadvertently and will be able to spot the opportunities that can be legally exploited to introduce new services and boost profits. They are still to be found and one year in from the introduction of such a comprehensive change in the legal regime of gambling is still early days. EEA and White listed operators have greater flexibility and there is still business to be had in the British market, as well illustrated by the huge growth in online bingo over the past year.

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