



Codes of practice: the implications

Photo by Daniel Neifm on Unsplash

Northridge Law's Melanie Ellis looks at key changes in the Advertising Standards Authority's rules for the UK

A recent ruling provides important guidance in relation to the appearance of top footballers and other sports personalities in gambling adverts, particularly in the social media context. The subject of the ruling was a Tweet by Ladbrokes, which included a video featuring Premier League footballers Philippe Coutinho, Jesse Lingard and Kalidou Koulibaly.

The UK's Advertising Standards Authority (ASA) strengthened its codes of practice relating to the appeal of gambling adverts to children in October 2022 and this ruling is its first under the new guidelines. The new rule states that adverts for gambling must not "be of strong appeal to children or young persons, especially by reflecting or being associated with youth culture" (CAP Code 16.3.12 and BCAP Code 17.4.5). This replaced previous wording that adverts must not be of "particular appeal" to under-18s.

The implications of the revised wording rely on the interpretation placed on it by the ASA: the advertising regulator interpreted "particular appeal" to mean that adverts should not appeal more to those aged under 18 compared to those aged over 18, whereas it interprets "strong appeal" in isolation, without reference to the adverts comparative appeal to adults. This difference is crucial, particularly when considering the use of top football players in adverts. Whilst it has always been accepted that such characters appeal to children, under the previous wording the fact that they had equal appeal to adults enabled them to be used to advertise gambling.

In the advert in question, the Ladbrokes logo appeared alongside a video featuring images of the footballers. It has previously been established that the mere presence of a gambling operator logo is sufficient to make a communication an advert for its gambling facilities, despite not including any

call to action and, although the ruling doesn't contain specific commentary on this point, it can be taken as confirmation of this. The Tweet was clearly considered by the ASA to be an advert for the operator's gambling facilities.

Ladbrokes' response to the ASA's challenge does not include any suggestion that the three footballers did not have "strong appeal" to under-18s. From guidance issued by the ASA alongside the new rule, we know that the regulator considers "UK footballers who play for top clubs, UK national teams or in high-profile competitions" to be "high risk" and likely to be assessed as having strong appeal to under-18s. Whilst not specifically stated in the rules of guidance, this appears to place the burden of proof on the advertiser to demonstrate that such characters do not have strong appeal to under-18s.

This is borne out by the ASA's approach in this case. It noted that "football was an activity in which a very significant proportion of under-18s participated directly on a frequent basis, and had a general interest in through following professional teams and players across a variety of media. There was also a highly developed infrastructure around organised participation and the sport had an exceptionally high media profile including popular, dedicated media for under-18s. Those who played at an elite level were likely to appeal strongly to children." As Coutinho, Lingard and Koulibaly were all current Premier League footballers and had played international football, the ASA concluded they would be well known to the large numbers of children who follow football. Based upon this assessment, the ASA proceeded on the basis that the footballers did have strong appeal to under-18s and Ladbrokes does not appear to have presented any evidence to dispute this.

There may well be cases in the future involving lower profile football players or stars from other sports which tend to have an older following (such as darts or golf), where arguments about whether the characters have strong appeal to under-18s are relevant. It will be interesting to see what evidence is persuasive to the ASA and where the burden of proof falls.

In this case, Ladbrokes was clearly aware of the potential appeal of the footballers to under-18s and seems to have given the “strong appeal” rule detailed consideration. The operator sought to take advantage of an exception to the rule, which is presented in the ASA’s accompanying guidance note. This exception permits gambling adverts which have strong appeal to under-18s, where under-18s can be effectively excluded from seeing the advert. Seeking to comply with the rule, Ladbrokes made use of age gating tools available on Twitter and targeted the ad to reach only users aged over 25. The gambling operator was able to provide data from Twitter which showed that of a total 50,666 impressions of the advert, 0% of their targeted audience was under 20 years old.

The ASA determined that it would have been acceptable for the advert to be used on a platform where those who saw the advert had been “robustly age-verified”, however because Twitter users had only self-verified their age on sign up, the age gating was insufficient. This conclusion does reflect statements in the ASA’s guidance, in which it sets out that the exemption will apply to social networks where advertisers can target “groups of users that can be age-verified to a very high degree of accuracy, for example on the basis of payment data or credit checking”.

The main social media platforms do not currently use age verification processes which are likely to meet that criteria, however in the past few months Facebook has begun using technology to prevent under 18s accessing its dating service in the US and Instagram has introduced new measures to require ID provision for a user to amend their date of birth. As such measures start to be used more widely, it may be possible for social media adverts to be targeted so as to meet the ASA’s criteria in the future.

When considering the use of footballers and other sports stars in social media advertising for gambling, it is not just the ASA’s CAP Code that applies. The Betting and Gaming Council (BGC) has published the Gambling Industry Code for Socially Responsible Advertising (the Industry Code),

which includes a requirement that all gambling adverts must be targeted at the 25+ age group, unless the platform appears on their white list. The BGC has also published a Code of Conduct for football clubs, to prevent them using their own social media posts to advertise gambling. Further, individual sports governing bodies may have their own rules for the relationships between clubs/athletes and gambling sponsors, including restrictions on the use of gambling logos on kits for youth teams or players.

Looking at the Industry Code, it is worth noting that Snapchat and Facebook have been approved by the BGC as exempt from that body’s rule that all gambling adverts must be targeted at the 25+ age group. The fact that the accuracy of these platforms’ age gating has been deemed sufficient to allow for 18+ targeting implies that they might be more likely to be sufficient for compliance with the ASA’s rules. However, whilst the BGC’s code deals with the targeting of adverts, the ASA’s “strong appeal” rule is stricter, requiring a high degree of assurance that under-18s do not see the advert, regardless of whether they are “targeted”. Gambling operators will need to carefully consider the measures used by various platforms to age verify their users to determine whether they are sufficient.

Whilst the ASA’s revised rules and decision in this case makes it very difficult for top flight football to be associated with gambling advertising, there are limits to the applications of the “strong appeal” rule. In particular, the ASA’s CAP Code has a specific exclusion for sponsorship arrangements, which means the “strong appeal” rule does not apply in these circumstances. This means that gambling advertising and logos can appear on kits worn by top footballers, if the

gambling operator is a club sponsor. A club or stadium may also be sponsored by a gambling operator, and their logo appear at the venue, for example on pitch-side hoardings.

The sponsorship exclusion is narrowly interpreted by the ASA and there will be cases where careful thought needs to be given to whether an advertising opportunity involves sponsorship or paid-for advertising, to avoid falling foul of the rule. Particularly where an individual athlete has a sponsorship agreement with a gambling operator, the distinction between excluded sponsored content and paid-for content, which is covered, can be a fine one and comes down to the nature of their remuneration arrangements and level of editorial control.

The ASA does not have the power to issue fines against advertisers breaching the code, be that gambling operators, sports clubs or individual athletes. For clubs and athletes, the negative publicity from being associated with advertising gambling to young fans is likely to be the key concern. These parties will be named in rulings where they are the advertiser, for example the club has made a social media post advertising a gambling operator partner. For gambling operators an adverse ruling by the ASA can in some cases lead to regulatory action by the Gambling Commission, typically resulting in a fine. The ASA has shown in this ruling that it will apply the new “strong appeal” rule and associated guidance strictly and, being well aware of the lack of robust age verification on social media platforms, is effectively saying that top footballers cannot be featured in advertising posts by gambling operators. This leaves social media quite a minefield, particularly for those wishing to advertise sports betting products.

Melanie is a gambling regulatory lawyer with 13 years’ experience in the sector. Melanie advises on all aspects of gambling law including licence applications, compliance, advertising, licence reviews and changes of control.

She has acted for a wide range of gambling operators including major online and land-based bookmakers and casinos, B2B game and software suppliers and start-ups. She also frequently advises operators of raffles, prize competitions, free draws and social gaming products.

Melanie has a particular interest in the use of new technology for gambling products and novel product ideas.

