

Child's play or gambling on the future of sports sponsorship deals?



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SPORT AND GAMBLING HAVE ENJOYED A LONG AND, at times, colourful relationship. With recent transformations in both industries, that relationship is under increasing pressure from outside influences and the impact of new self-regulation proposed by the gambling industry may prove to be crucial to the continued longevity of their association. Whether the outcome of such self-regulation will have the desired effect or will prove to do quite the opposite remains to be seen.

The boom in online gaming has seen the gambling industry demonstrate its willingness to part with enormous sums of money in order to raise brand awareness via sport. With professional sports becoming ever more adept at exploiting their commercial rights the synergies would seem obvious, but at what price?

PUBLIC CONSULTATION

The publicity garnered by a number of prominent sports sponsorship deals coincided with a regulatory overhaul of the gambling industry as a whole and prompted a comprehensive public consultation by the Gambling Commission (the Commission) in January 2007.

Broadly speaking, the consultation was intended to assess the wider impact that gambling advertisements have on responsible gambling. One issue of particular pertinence as regards the protection of the young arising from shirt sponsorship deals by gambling operators is the display of gambling operators' logos on children's replica kits. Certain parties have propounded that this is a calculated attempt by gaming companies to encourage gambling specifically among minors and have called for a specific prohibition on that activity.

The Commission has now reported on its consultation and, although there may be no immediate restrictions imposed on children's replica kits, it did imply that there is a clear obligation on the industry to consider its position in that regard. In response, the gambling industry has reportedly accepted, in principle, a voluntary code of practice dictating that gambling operators who sponsor sports teams should require that replica kits in children's sizes do not bear their logo. In electing whether to comply with such code, it is important that both the gambling and sports industries appreciate the ramifications of such a decision.

GAMBLING ACT 2005

At present, any advertising or promotion carried out by gambling operators in the UK is subject to a number of statutory and self-regulatory constraints. The government has sought to

modernise and consolidate those provisions into one definitive piece of legislation, the Gambling Act 2005 (the Act), which, at the time of writing, is set for full implementation from 1 September 2007.

The Act introduces a new, wider definition of advertising which covers anything that is done to encourage the use of gambling facilities, including entering into arrangements such as brand sharing and sponsorship. The Act also contains various licensing objectives that will be applied to the gambling industry and reflect the government's determination that the 'reduction of harm should take precedence over the maximisation of innovation, consumer choice and economic gains'.

THE GAMBLING COMMISSION

The Commission was established primarily to apply and promote such licensing objectives. The objectives include the protection of 'children and other vulnerable persons from being harmed or exploited by gambling'. The Commission can pursue that objective in a number of ways and it has the ability to include prohibitions or restrictions relating to advertising in its Licence Conditions and Codes of Practice (the LCCP), which will apply to all licensed gambling operators.

Some measures intended to achieve that objective are already in place. For example, the Committee for Advertising Practice (CAP) and the Broadcast Committee of Advertising Practice (BCAP) have announced new rules on gambling advertising that also come into force this month, which are broadly similar to those in place for alcohol advertising. For instance, they prohibit advertisements which portray, condone or encourage gambling behaviour that is socially irresponsible or could lead to financial, social or emotional harm or exploit the susceptibilities, aspirations, credulity, inexperience or lack of knowledge of children, young people or other vulnerable people. The CAP Code will be administered by the Advertising Standards Authority (ASA) and such rules will apply to all gambling operators permitted to advertise within the UK from 1 September 2007 (namely those based in the UK, the EEA, Gibraltar and certain other 'whitelisted' jurisdictions). It is also important to note that the Secretary of State has retained the right to impose further statutory regulations controlling the form, content, timing and location of non-broadcast advertising by gambling operators.

CONSULTATION RESULTS

Following its lengthy consultation, the Commission was forced to acknowledge that the majority of respondents, including, somewhat surprisingly, the Responsibility in Gambling Trust, were opposed to a ban on children's replica strips carrying the branding

of gambling operators. Similarly, the Commission confirmed in its own position statement that the inclusion of any provision in the LCCP that required the removal of such sponsor branding from children's shirts would be unjustifiable and arguably counter-productive.

In a strange twist, the Commission then proceeded to state that, as part of the licensed gambling operators' wider obligation to use sponsorship only to promote gambling in a socially responsible manner, the industry must still 'consider' whether to preclude the use of their logos on children's replica shirts in new sponsorship deals. The Commission concluded that the right approach for the time being is to monitor the way in which new advertising freedoms are used by operators and only to intervene 'when and if problems emerge'. Similarly, the Commission:

'... will not hesitate to introduce licence conditions or codes governing sponsorship or to advise the Secretary of State to act if this proves necessary.'

The Commission's conclusion also makes specific references to the likely impact of gambling advertising via billboards, hoardings, event programmes and, significantly, adult players' shirts. While such references may have only been intended as exemplary mentions, the overall impression is that the Commission remains concerned that sports sponsorship in general may result in increasing problem gambling. As such, it is quite understandable for the gambling operators to have seen the issue of children's replica shirts as only the 'tip of the iceberg'.

The gambling industry has thus been left with a dangerous combination of unclear guidance and implicit threats of more serious investigations into its use of sport as a marketing platform, which could result in an outright ban comparable to the prohibitions on the advertising of tobacco throughout much of the EU and in the UK via the Tobacco Advertising and Promotion Act 2002. Any such decision would have significant ramifications for UK sport, in particular within the Premier League, where shirt sponsorship deals with gambling operators alone were valued at about £70m in 2006. This is somewhat disappointing given that the Commission was designed to fulfil a role as an assessor of risks associated with gambling and as a guardian that would minimise its negative effects objectively. It should therefore be in a far superior position to carry out a wider assessment of the relevant considerations than the gambling industry itself. Instead, it has thrown the decision back to the gambling industry at a time when it needed some certainty to justify ongoing investment in the sports sector.

SELF-IMPOSED RESTRICTIONS

Before the gambling industry had time to draw breath, the Portman Group made any opposition to the Commission's stance virtually untenable by volunteering its own self-imposed ban on the inclusion of branding on children's replica shirts within alcohol sponsorship deals entered into after 1 January 2008.

As a result, it has been reported that the gambling industry has agreed in principle to a self-imposed restriction on children's replica kits akin to that put forward by the Portman Group. It would seem that the industry is hoping that, by such a move, the Commission's appetite for further regulation of its marketing activities in the sports sector will be sated.

Following its consultation, the Commission conceded that any prohibition specific to such shirts would be unlikely to achieve the desired results for a number of reasons. First, it would be unrealistic to claim that gambling operators enter into such transactions with the explicit intention of producing branded shirts for minors. Secondly, a ban on the official sale of such goods would not necessarily suppress the desire of young persons to look like their sporting heroes and may even result in a black market for shirts bearing the gambling operators' logos. Thirdly, with regard to teenage fans, it is fair to presume that the majority of them will purchase and wear adult-sized kits. As such, a ban on branding on children's replica shirts would have almost no effect on older children choosing to wear adult-sized shirts. This is especially significant when it is children in this age group who are particularly susceptible to the dangers of problem gambling when compared to their younger counterparts. Fourthly, to date, no empirical research has been able to demonstrate categorically that gambling advertising leads directly to an increase in gambling activity itself. Similar studies in related fields, such as the alcohol industry, have shown that advertisements do not necessarily stimulate primary demand. Therefore, in the absence of evidence to the contrary, it is arguable that gambling operators' marketing activities in the sports sector will not lead to an increase in the harms caused by gambling itself.

CONCLUSION

In spite of the lack of a demonstrable link between sports sponsorship and problem gambling, the gambling industry may have effectively shot itself in the foot by offering a ban on branding children's replica shirts. By doing so, it is acknowledging that such marketing might have a negative effect, a concept which may undermine the future of sports team sponsorship and industry events.