

ENTERTAINMENT, MEDIA & SPORTS

>>ALERT

AMERICAN GAMING ASSOCIATION HEDGES ITS BETS WITH RESPONSIBLE MARKETING CODE FOR SPORTS WAGERING

The decision by the U.S. Supreme Court to strike down the Professional and Amateur Sports Provision Act of 1992 (PASPA) in May 2018 has created a frenzy in the U.S. sports betting industry.

Following the decision, more than a half-dozen states promptly legalized or expanded sports betting, a half-dozen are in the process of doing so and nearly two dozen have introduced legislation.

The prospects of nationwide legalized sports betting have never been closer. Fantasy sports businesses FanDuel and DraftKings have opened sportsbook operations and media companies such as Fox Sports have invested in gaming operations to offer sports betting across their media platforms.

This whirlwind of activity has created an advertising environment poised for explosive growth. As more states contemplate what regulatory framework to apply to sports betting, the American Gaming Association (AGA) released its "Responsible Marketing Code for Sports Wagering" (the AGA Code) in May 2019, aiming to impose order on sports betting advertising practices and ward off potential government regulation.

THE BOTTOM LINE

The AGA Code represents a tentative first step by the AGA to impose a self-regulatory framework on an exploding sports betting industry. Whether it will be sufficient to ward off government oversight remains to be seen, but some key concerns remain:

- >> Age protections are looser than spirits and beer advertising guidelines;
- >> The effectiveness of responsible gaming messages is an open question; and
- >> The volume and pervasiveness of advertising messages is not addressed.

KEY OBJECTIVES OF THE CODE

A primary goal of the AGA Code is ensuring that sports betting advertisements are targeted at those legally able to wager. It requires that advertising be placed in media where at least 71.6 percent of the audience is reasonably expected to be of legal gambling age and avoids cartoon characters and personalities that appeal primarily to those under the legal age. In addition, the AGA Code prohibits advertising in official college newspapers, radio stations and other university-owned news assets, as well as any advertising on campus.

Another aim of the AGA Code is to promote responsible gaming. It requires that each advertisement contain a responsible gaming message and a toll-free number, where practical. It also discourages promoting excessive participation in sports wagering and any suggestion that social, personal or financial success is guaranteed by engaging in sports betting.

ARE THESE GUIDELINES ENOUGH?

The principles embodied in the AGA Code may seem familiar since they emulate the "Responsible Marketing

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Codes” published by the Distilled Spirits Council of the United States (DISCUS) and the Beer Institute. Like the DISCUS and Beer Institute guidelines, the AGA Code focuses on audience composition. Yet, the DISCUS guidelines apply the 71.6 percent threshold to event advertising, while the AGA Code simply requires that a majority of the audience at many of the events in the advertising venue not be under the legal gambling age. This would allow for sports betting advertising at venues hosting esports events that attract an audience under the legal age if that venue also hosts concerts and traditional sporting events where the majority of patrons are over the legal age.

Similarly, while the DISCUS guidelines require age affirmation to engage with a website operated by a spirits distributor, the AGA Code only requires age affirmation before clicking onto a page where a bet can be placed, thus allowing underage users to peruse the site, gather information about odds and point spreads and interact with other gamblers, all without any age qualifications.

Moreover, the growth of sports betting brings with it a substantial risk of an increase in problem gambling and its aftereffects. It is unclear whether traditional responsible gaming messaging will be a sufficient deterrent in an era of easy mobile access to sports betting.

The AGA Code may be designed to evolve as the sports betting industry develops, but it leaves the industry exposed to criticism that it is not doing enough to prevent underage and problem gambling.

FOR MORE INFORMATION

James L. Johnston
Partner
212.468.4867
jjohnston@dglaw.com

or the D&G attorney with whom you
have regular contact.

Davis & Gilbert LLP
212.468.4800
1740 Broadway, New York, NY 10019
www.dglaw.com
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